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with Transnational Legal Transactions**

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**PROCESS IN POLAND? EVIDENCE IN ETHIOPIA?: ONLINE HELP WITH
TRANSNATIONAL LEGAL TRANSACTIONS**

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I. Introduction

With the globalization of the economy, American attorneys face increasing challenges in transactions and contract formation. When conducting business between entities in more than one country, whose law governs the transaction? If a dispute arises, where and how will it be solved? How is service of process completed outside of the United States? How is “discovery” of documents and other types of evidence accomplished? If judgment is entered in one country, will it be enforced in another? These are questions that many American attorneys face, regardless of whether they intended to practice “international law.” This paper discusses organizations and online resources which will assist the transnational lawyer in global transactions or litigation. The focus is on free resources available in English, although a few resources available in other languages are included as well.

II. Preliminary Definitions

Private international law is not actually *international* law but rather the branch of municipal, or domestic, laws dealing with cases having a contact with some system of law other than the domestic system. Private international law is often referred to as “conflicts of law.”¹ According to Germain, private international law always includes choice of law questions, and in many legal systems it also includes questions concerning

¹ Parry and Grant Encyclopaedic Dictionary of International Law 400 (John P. Grant and J. Craig Barker eds., 2004).

choice of jurisdiction, inheritance, marriage and divorce, injuries, accidents, gathering of evidence abroad, and the recognition of judgments.²

Transnational law is an evolving legal framework governing economic and monetary transactions and contracts involving two or more countries or parties from two or more countries.³ The purpose of transnational law is to regulate international commercial transactions by a uniform system of law.⁴

III. Useful Sites

a. Hague Conference on Private International Law
http://www.hcch.net/index_en.php

Established in 1893, the Hague Conference is an intergovernmental organization working toward the unification of private international law through the negotiation and drafting of multilateral treaties or international conventions in the different fields of private international law, including:

- international judicial and administrative co-operation;

² Claire M. Germain, GERMAIN'S TRANSNATIONAL LAW RESEARCH ¶ 1.01.2 (1991 & Supp. 2004).

³ A commonly-held theory maintains that modern international commercial law derives many of its fundamental principles from the medieval "law merchant" or *lex mercatoria* as developed by merchants and traders engaging in trans-border trade and that today's commercial arbitrators can trace their professional origins to the merchant judges who provided quick judgments utilizing relaxed procedural rules. See Law Merchant in WIKIPEDIA, THE FREE ENCYCLOPEDIA. Retrieved February 7, 2007 from http://en.wikipedia.org/wiki/Lex_mercatoria. For a viewpoint disputing that theory, see Stephen E. Sachs, *From St. Ives to Cyberspace: The Modern Distortion of the Medieval 'Law Merchant'*, 21 AM. U. INT'L L. REV. 685 (2006) .

⁴ See id. at ¶ 1.01.3.

- conflict of laws for contracts, torts, maintenance obligations, status and protection of children, relations between spouses, wills and estates or trusts; recognition of companies; and
- jurisdiction and enforcement of foreign judgments.

Over sixty countries belong to the Hague Conference, and more than 120 countries are parties to Hague Conventions. From 1951 to 2005 the Conference adopted 36 Conventions. Some of these deal with the determination of the applicable law, some with the conflict of jurisdictions, some with the recognition and enforcement of foreign judgments and some with administrative and judicial co-operation between authorities. Widely-ratified Hague conventions address civil procedure, service of process, taking of evidence abroad, legalization of documents, conflicts of laws relating to testamentary dispositions, maintenance obligations, recognition of divorces, protection of minors, international child abduction and intercountry adoption.

The Hague Conference web site provides the texts of the Conventions from 1951 to 2003 at http://www.hcch.net/index_en.php?act=publications.listing&sub=3. The site also includes charts showing the status of the different Conventions, enabling the practitioner to determine if a specific country has signed on to a particular Convention. At http://www.hcch.net/index_en.php?act=text.display&tid=10, the site provides a listing of Conventions grouped by subject, such as “Protection of Children” or “International Judicial and Administrative Cooperation.”

b. The United Nations Commission on International Trade Law (UNCITRAL)
<http://www.uncitral.org/>

The United Nations General Assembly created UNCITRAL in 1966 as a response to perceived disparities in national trade laws which were viewed as providing obstacles to the free flow of trade. The General Assembly gave UNCITRAL a mandate to further the progressive harmonization and unification of international trade law. UNCITRAL's work includes identifying areas where outdated or unpredictable laws hinder international commerce. The goal is to craft solutions which are acceptable to countries with different legal systems and levels of economic and social development. As part of its work, UNCITRAL produces conventions, model laws, legal guides, legislative guides, rules, and practice notes. UNCITRAL differs from the World Trade Organization(WTO) which deals with trade policy issues (liberalization, abolition of trade barriers, unfair trade practices or other similar issues) usually related to *public* law, whereas UNCITRAL deals with the laws applicable to *private commercial parties* in international transactions.

The major areas of UNCITRAL's work are:

- International Commercial Arbitration and Conciliation
- International Sale of Goods (CISG) and Related Transactions
- Insolvency
- International Payments
- International Transport of Goods
- Electronic Commerce
- Procurement and Infrastructure Development

- Penalties and Liquidated Damages

UNCITRAL's web site provides access to its numerous international agreements, including the United Nations Convention on Contracts for the International Sale of Goods (CISG), which sets forth a uniform transnational sales law. The CISG has been ratified by over 70 countries, including the United States. The texts of all of UNCITRAL's conventions, model laws, legislative guides, arbitration rules, legal guides and other documents are linked from

http://www.uncitral.org/uncitral/en/uncitral_texts.html.

Of particular use to the practitioner may be the database called Case Law on UNCITRAL Texts (CLOUT) http://www.uncitral.org/uncitral/en/case_law.html , which collects information on global court and arbitral decisions related to UNCITRAL's conventions and model laws. CLOUT provides abstracts in several languages, including English, of these decisions. In addition, the CLOUT record provides a citation if the decision is published and also includes known reproductions or summaries in additional languages. CLOUT also includes a digest arranged by CISG article number at

http://www.uncitral.org/uncitral/en/case_law/digests/cisg.html.

c. International Institute for the Unification of Private Law (UNIDROIT)

<http://www.unidroit.org/>

UNIDROIT's purpose is to study methods for modernizing, harmonizing and coordinating private and commercial law as between countries and groups of countries. UNIDROIT's work has resulted in the adoption over the years of numerous international conventions and model laws related to international commercial law, including the 1988 UNIDROIT Convention on International Financial Leasing, the

1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and the 2002 Model Franchise Disclosure Law.

In addition, UNIDROIT has published Principles of International Commercial Contracts, which serve as a “Restatement” for international commercial contracts, providing black letter rules reflecting current trade practices. The Principles were first prepared by legal experts from around the world in 1994 and updated in 2004. They can be found on the UNIDROIT web site at

<http://www.unidroit.org/english/principles/contracts/main.htm>. In addition to providing guidance to arbitrators and courts in matters relating to international commercial contracts, the Principles have been influential in reforming national laws.⁵

UNIDROIT’s web site includes the UNILEX database which collects court decisions and arbitral awards concerning both the CISG and the UNIDROIT Principles. UNILEX provides abstracts and the full text of the cases in their original language. The cases are searchable by date, country, and instrument article. UNILEX also includes a bibliography of publications about the CISG and the UNIDROIT Principles. Access UNILEX at <http://www.unilex.info/>.

⁵ For example, the Principles played an important role in the drafting of Russia’s new Civil Code in 1995. Michael J. Bonnell, *UNIDROIT Principles 2004 – The New Edition of the Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law*, 2004 UNIFORM LAW REVIEW 5, also available at <http://www.unidroit.org/english/publications/review/articles/2004-1-bonell.pdf>.

d. Electronic Library on International Commercial Law and the CISG
<http://cisgw3.law.pace.edu/>

This database (hereinafter referred to as the CISG Database) is produced by the Pace Institute of International Commercial Law and the Law Library at Pace University School of Law. The CISG database includes an annotated version of the text of the CISG at <http://cisgw3.law.pace.edu/cisg/text/cisg-toc.html>. The annotations include legislative history, case law, and links to scholarly articles. The site also provides a searchable database of CISG cases at <http://cisgw3.law.pace.edu/cisg/text/caseschedule.html>.

In addition to producing the CISG database, the Pace Institute of International Commercial Law participates in the Queen Mary Case Translation Programme, which is a public service open to the academic and practicing legal communities and provides high quality professional translations into English of foreign case law (including arbitral awards) relating to the CISG and UNIDROIT Principles of International Commercial Contracts. The cases are translated by lawyers from all over the world. More information about the translation program is available at <http://cisgw3.law.pace.edu/cisg/text/queenmary.html>.

e. Department of State - Private International Law
<http://www.state.gov/s/l/c3452.htm>

This site is helpful for determining whether the United States is a party or plans to be a party to a particular treaty. The site's stated purpose is to provide a convenient location to find treaties in force for the United States, other international instruments,

and information on current negotiations and projects covering the private international law in four major categories:

- Trade/Business Transactions Law
- International Judicial Assistance
- Wills, Trusts and Estates
- Family Law

Within each category, the site groups private international law agreements according to whether the United States is a party, is considering ratification, or is not a party (and not considering ratification). In addition, the State Department site provides information about “Works in Progress,” including drafts, background reports, U.S. Government position papers and proposals, and other working documents concerning conventions and other international instruments that are currently under negotiation.

f. Uniform Law Review

<http://www.unidroit.org/english/publications/review/main.htm>

Published by UNIDROIT, the *Uniform Law Review* is a bilingual (English/French) law periodical covering legal harmonization and uniform law instruments relating to private international commercial law. The web site includes an index from 1996 to present and the full text of selected articles.

g. INCOTERMS

<http://www.iccwbo.org/incoterms/>

Uniform Commercial Code definitions of commercial delivery terms such as

F.O.B. (Free on Board) and F.A.S. (Free Alongside) are not always used with intent in global commerce. More widely used are the Incoterms, a set of definitions called published by the International Chamber of Commerce (I.C.C.) and widely used in international commerce. Incoterms sets forth the obligations of the seller and buyer based on the terms of the contract. The I.C.C. web site provides a FAQ about Incoterms, the preambles to the set, a PDF chart illustrating the buyers' and sellers' obligations under each of the Incoterms (including a list of critical points), and information about ordering the full set of Incoterms.

h. Department of State - International Judicial Assistance, Notarial Services, and Authentication of Documents

http://travel.state.gov/law/info/judicial/judicial_702.html

This State Department site provides information about authenticating and legalizing documents for use abroad, obtaining an apostille (a certificate issued by a designated authority in a country where the Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents applies), notaries public abroad, obtaining evidence abroad, preparing letters rogatory abroad. The site also provides country-by-country information. For example, the brochure at http://travel.state.gov/law/info/judicial/judicial_672.html contains State Department admonitions about the dicey proposition of taking depositions in Brazil and http://travel.state.gov/law/info/judicial/judicial_674.html discusses service of process in Israel.

IV. Additional Resources:

The chapter on International Economic Law in the ASIL Guide to Electronic Resources in International Law at <http://www.asil.org/resource/iel1.htm> includes links and annotations for selected web sites covering private international law.

The Electronic Information System for International Law (EISIL), at <http://www.eisil.org/>, is an online database of online resources for international law. EISIL contains a category linking to numerous online resources related to private international law. The resources are divided into the following categories: Basic Resources, Trade & Commerce, Finance & Banking, Wills, Trusts & Estates, Family & Children, International Judicial Assistance, and Jurisdiction & Judgments. For each resource, EISIL provides not only a link to the most authoritative online source but also a record providing detailed information about the document, including citation information where relevant.

In most states the authority and responsibility for document authentication and apostilles rests with the secretary of state. The National Association of Secretaries of State maintains a page with links to each secretary of state web site at <http://www.nass.org/sos/sosflags.html>. On each secretary of state's home page, look for a link to Authentication of Documents/Apostille to find the pages containing information about these services.