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# Does an Unknown World Government Exist? Impact of Commercial and Consumer Law

Donald B. King\*

## I. Introduction

The idea presented today is both audacious and broad. Those trained in the law often tend to focus intensely on narrow problems, dissecting them skillfully with probing questions. But, at times, it is important to look at the bigger picture and use skills of analysis and synthesis in this regard. The hypothesis is that comparative and international commercial law, much of which has been developed by members of the International Academy of Commercial and Consumer Law (Academy), forms a substantial part of an unrecognized world government.

While concentrating on commercial and consumer law, it is necessary to make a brief mention of the overall framework of this proposed unknown world government. Basically, it is incremental and defacto. Definitions of history, as well as of government, tell us that a variety of types and forms may exist. In looking at these various dictionary definitions of government, it can be seen that there is a wide range of definition and, further, that there may be a variety of forms which constitute a government.<sup>1</sup> Basically, however, there is some overall type of organization or organizations that exercise certain control.<sup>2</sup> Of course, some of the definitions refer in alternative definitions to states or nations since this is the most common form of government thought of today.<sup>3</sup> Still, there is nothing to keep an entire world from having a government in

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1. See, e.g., WEBSTER'S NEW AMERICAN DICTIONARY (1995); RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1987 unabridged ed.).

2. *Id.*

3. OXFORD ENGLISH DICTIONARY (2000) (one of the definitions includes the word "nation"); RANDOM HOUSE, *supra* note 1 (referring to states as one type of unit).

terms of the general concepts found in these various definitions.

It is important to note that the organization which constitutes a government need not be seen as a singular one, but in terms of its various functions. In other words, there could be several branches of government which are responsible for different matters. It is when they are viewed as a whole that one can see the existence of a government. If they are viewed separately or in isolation, one does not find a government. Indeed, one of the major problems today is that too many of the international developments have been seen as more or less isolated developments. There has not been an overall viewing of them. If there is such a viewing, it can be seen that there are various branches of government with certain controls. This is not to say that the controls are absolute or always effective. It is, however, to say that there are such organizations and controls in place giving rise to certain understandings of how nations or states or individuals should conduct themselves.

Even before the Articles of Confederation government of the United States,<sup>4</sup> there was a government of the United States found in terms of the Continental Congress.<sup>5</sup> The first government of the United States was the Continental Congress which declared independence from Great Britain. This government existed even before the Articles of Confederation had certain representation and powers. There were representatives from each state which attended the Continental Congress. There was an army fighting a war of independence, which was financed by the Continental Congress government. However, very short term enlistments, coupled with soldiers constantly leaving to go home and shortages of pay, limited the Continental Congress' effectiveness. While the Continental Congress did levy some taxes upon each state, these were not always promptly paid and made the financing of the government at war very difficult. Indeed, the Continental Congress had more difficulty collecting assessments than does the current United Nations. Economically, each State was more or less on its own and had its own government. Still, it would be considered to be one of the early beginnings of this nation and a type of government. While it was weak and ineffectual in many ways, it did win the War of Independence!

Looking at the next stage of the U.S. government, one can see that, following the War of Independence, the States formed into a Confedera-

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4. James Brown Scott, *Articles of Confederation, in THE DECLARATION OF INDEPENDENCE, THE ARTICLES OF CONFEDERATION, AND THE CONSTITUTION OF THE UNITED STATES* 13-23 (1917).

5. *Id.* at 6. The Declaration of Independence gave the Free and Independent States the full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other things which Independent States may of right do.

tion.<sup>6</sup> Indeed, it was the Articles of Confederation which governed the States rather than the Constitution, which came later. In this regard, the States were united under the Articles of Confederation into a government, but the States retained major powers, controls and functions. In regard to economic activity between the States, each State controlled its own boundaries and tariffs. Some States kept out goods manufactured in other States through high State tariffs. Economically there was a brief lull of commerce during this time. In regard to the military under the Articles of Confederation, each State maintained its own State militia. The bulk of military power rested within these state militias. The central government was relatively weak and did not undertake to enforce any of its decisions upon the sovereign States.

However, to some degree, there was some central power since all of the States were represented in this Confederation. This Confederation did have meetings attended by the various state representatives and did conduct foreign relations.<sup>7</sup>

Nevertheless, when one looks at the government of the United States under the Articles of Confederation, one can see a relatively weak type of government. Still, it is a government, and it did exist. Indeed, it is interesting, as will be pointed out later, that the existing world government of today has more power over a number of matters including that of trade and economic activity.

Europeans are familiar with the somewhat haphazard and fortuitous development of the European Community.<sup>8</sup> From the seeds of the European coal and steel organization, it gradually developed into more of a government. Yet the early meetings of Ministers of the European Nations and the abiding of its decisions made a limited type of government. The extension of this organization and the development of a parliament and court certainly must be considered a government.

To help organize our thinking in more familiar terms, we may think of legislative, executive, and judicial functions. While these divisions are somewhat artificial, they help us better see the emergence of the de facto and incremental world government.

#### A. Legislative

If one views the legislative branch of world government and the widespread system of legislation on various key subjects, then one can find a part of the unknown world government. This legislative function

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6. Scott, *supra* note 4, at 11-12.

7. *E.g.*, Benjamin Franklin and Thomas Jefferson were ambassadors to France.

8. *See generally* THE EXPANDING EUROPEAN UNION: PAST, PRESENT, FUTURE (John Redmond & Glenda G. Rosenthal eds., Lynne Rienner Publishers 1998).

may exist through the alternative use of several bodies or organizations in various types of activity.

In the economics sphere many of the developments are well known to members. The current world government is considerably more advanced than was the Articles of Confederation government found in the early stages of the United States. There is a regulation of world tariffs and world barriers that far exceeds any type of controls found in that earlier form of government. This regulation is on a worldwide basis.<sup>9</sup> This agreement, in effect, very much curtails the leveling of tariffs by any country or the creation of other artificial trade barriers. It also regulates practices which tend to economically destroy competition in the marketplace. The legislation was achieved through an international treaty system.<sup>10</sup> Further, there is an administrative organization known as the World Trade Organization<sup>11</sup> and a court as well.<sup>12</sup>

Another worldwide system effectuating trade relates to laws drafted to cover international commercial transactions. The Vienna Convention on the Sale of Goods, also known as the International Convention for the Sale of Goods (CISG),<sup>13</sup> has been ratified by a large number of countries.<sup>14</sup> In this sense, it has been made effective legislation by a number of countries throughout the world. While it is true that some countries have not yet agreed to it, a large majority of nations have. The countries through their ratification have engaged in a type of legislative function.

There are also a number of other international laws, some drafted by UNCITRAL,<sup>15</sup> which relates to specific areas including arbitration,<sup>16</sup> bills and notes, terminal operators, credit transfer, procurement, guarantee and stand by letters of credit, electronic commerce, and insolvency. In addition, Gerhard Herrman, Secretary of UNCITRAL, has proposed a Global Commercial Code.<sup>17</sup> This would provide a framework for all of

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9. See generally THE LAW OF THE WTO (Philip Raworth & Linda C. Reif eds., Oceana Press 1995).

10. *Id.* at 175-92.

11. *Id.* at 177.

12. *Id.* at 713.

13. The United Nations Convention on Contracts for International Sale of Goods, U.N. Doc. A/Conf.97/19 (1981).

14. See Louis F. Del Duca & Patrick Del Duca, *Selected Topics Under the Convention on International Sale of Goods*, 106 DICK. L. REV. 205, 207 (2001). Professor John Honnold, an Academy member, was honored by the Academy for his work in the drafting of this international legislation.

15. *E.g.* United Nations Commission on International Trade Law, Yearbooks, Vol. 1 (1968-1970).

16. See Michael Joachim Bonell, *Creating International Legislation for the Twenty-First Century: Do We Need a Global Commercial Code?*, 106 DICK. L. REV. 87, 88, n.7 (2001). Professor Bonell was honored by the Academy for his work with UNIDROIT in formulating international standards.

17. Gerhard Herrman, *Outline of Paper presented at 10th Biennial Conference of the*

the current and future laws governing the various aspects of international commerce. Professor Joachim Bonell also has examined and supported a concept of a Global Commercial Code.<sup>18</sup> A conference on Worldwide Harmonization of Private Law and Regional Economic Integration in Rome under UNIDROIT also explored some of these issues.<sup>19</sup>

There are also international standards set for "letters of credit." The International Chamber of Commerce has drafted a "letters of credit" type of law which many businesspeople use for international transactions.<sup>20</sup> Various members of the Academy have written on "letters of credit" in international trade, including Professors Boris Kozolchyk,<sup>21</sup> James Byrne<sup>22</sup> and Jean Stoufflet.<sup>23</sup> In addition, the International Chamber of Commerce has drafted definitions for various types of shipping terms and abbreviations for shipping terms, spelling out the legal obligations of each.<sup>24</sup>

These are some areas of international commercial and consumer law which are still being explored.<sup>25</sup> Many of these will not become more uniform or international for a number of years. However, the research and laws currently being explored may lend themselves to an even greater body of world commercial law in the years to come. The fact that these are not yet a part of international treaty law or international standards does not detract from the idea of an unknown world government. Governments do exist and yet a large body of their laws may be formulated over many years after their initial existence. Also, the fact that there may be possible globalization efforts concerning these governments further strengthens the idea of an unknown world government.

While there is not yet an international system relating to security for loans or sales of equipment on credit, there are some efforts being made in this regard. There are groups working on creating an international type of security interest which can make sales on credit even more feasible.<sup>26</sup> The globalization of the UCC Article 9 concept is a topic being

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*International Academy of Commercial and Consumer Law held at the Dickinson School of Law of the Pennsylvania State University (2000).*

18. Bonell, *supra* note 16.

19. UNIDROIT 75th Anniversary Conference in Rome, 2002.

20. INCOTERMS 1990, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 460; *see also* DONALD KING, PURCHASING MANAGER'S DESK BOOK OF PURCHASING LAW, 374-376 (Prentice Hall, 3d ed. 1997).

21. BORIS KOZOLCHYK, COMMERCIAL LETTERS OF CREDIT IN THE AMERICAS: A COMPARATIVE STUDY OF CONTEMPORARY COMMERCIAL TRANSACTIONS (1966).

22. James Byrne is the editor of the LETTER OF CREDIT NEWSLETTER.

23. Jean Stoufflet, *Fraud in Documenting Credit, Letter of Credit and Demand Guaranty*, 106 DICK. L. REV. 21 (2001).

24. KING, *supra* note 20.

25. *E.g.*, consumer protection stills needs to be considered by UNCITRAL for possible international law; electronic transactions; and sale and purchase by e-mail.

26. *E.g.*, The American Law Institute Transnational Insolvency Law Project.

researched by Professor David Allan.<sup>27</sup> Personal security interests in Europe with competing commercial and consumer policies were dealt with by Professor Ulrich Drobniig at this Conference of the Academy, and national and international concern with security in movables was addressed by Harry Sigman.<sup>28</sup> Security interests in mobile equipment has been dealt with by Professor Ron Cuming,<sup>29</sup> and such interests in checks and contract rights by Professor Shalom Lerner.<sup>30</sup> Professor Catherine Walsh has written on the UNCITRAL draft convention on the assignment of receivables.<sup>31</sup> Peter Winship also dealt with security interests.<sup>32</sup>

The implications of new technological developments on the national and international scene such as electronic signatures has been dealt with by Professors Rafael Ortiz<sup>33</sup> and Richardo Sandoval.<sup>34</sup> Electronic developments in letters of credit is being researched by Professor Jim Byrne.<sup>35</sup> The work of Professors Jacob Ziegel and Jay Westbrook in transnational bankruptcy problems is well known.<sup>36</sup> Their efforts in the American Law Institute project and exploration of bankruptcy in various countries may eventually lead to the formulation of an international system.

Thus, it can be seen in the economic realm that there is a considerable amount of legislation which serves as a basis of law in the economic sphere. The general principle of freedom of contract, with certain limita-

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27. Emeritus Professor of Law at Bond University, Gold Coast, Australia.

28. Ulrich Drobniig, *Personal Security in Europes Protection of Commercial and Consumer Interests* (presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law); Harry Sigman, *Registry for Security Interests in Movables* (presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law); Harry C. Sigman, *The Case for Modernizing World Wide Secured Transactions in Movable Property*, in *NEW DEVELOPMENTS IN INTERNATIONAL COMMERCIAL LAW AND CONSUMER LAW 229-34* (Jacob S. Ziegel ed., Hart Publishing 1998).

29. Ron Cuming, *Recognition of Security Interest in Mobile Equipment: An International Approach*, in *COMMERCIAL AND CONSUMER LAW: NATIONAL AND INTERNATIONAL DIMENSIONS 82-104* (Ross Cranston & Roy Goode eds., Clarendon Press 1993).

30. Shalom Lerner, *Contractual Rights and Checks as Security in Israel*, 22 *PENN ST. INTN'L L. REV.* \_\_\_\_ (forthcoming 2003).

31. Catherine Walsh, *Receivables Financing and the Conflict of Laws: The UNCITRAL Draft Convention on the Assignment of Receivables in International Trade*, 106 *DICK. L. REV.* 159 (2001).

32. Peter Winship presented a paper at 11th Biennial Conference of the International Academy of Commercial and Consumer Law.

33. Rafael Ortiz, *The Formation of the E Contract* (presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law).

34. Richardo Sandoval, *The New Chilean Law on Electronic Signature* (presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law); Richardo Sandoval, *The Chilean Draft of Electronic Documents in Relation with the UNCITRAL Model Law of Electronic Commerce*, 106 *DICK. L. REV.* 139 (2001).

35. James Byrne, Professor at George Mason University School of Law.

36. ALI work in this area, in which both have been leaders, in the ALI Transnational Insolvency Project (formerly the International Insolvency Project).

tions, is also a generally accepted basis of world trade. This overall body of law forms an important part of the law of the existing world government. Also, there is a very considerable body of research and writing that can serve as a basis for even more extensive development of worldwide legislation.

Of course, even with a worldwide framework for commercial law, major national commercial codes do exist. There is the Uniform Commercial Code of the United States, the Sale of Goods Act and its variation of the British Commonwealth of nations, the great Civil Law codes of commerce in Europe and the civil codes Latin America. Does this detract from the international formulations?

To some extent, it may detract from a more simplified and universal code of commerce. It would be easier for business persons and lawyers throughout the world to have the very same commercial code. Instead, now they must know both national codes and international ones. However, in a larger and more long-range view, this does not cause any great problems.

The International Sale of Goods Act and other international formulations of commercial law have had mostly positive results. First, the international formulation gives businesspeople and lawyers in the different countries a common basis for discussion and interaction; differences between the great systems of law—the Common Law and Civil Law—fades away. Second, some businesspeople will be willing to use the international law as the basis for the contact. Third, some businesses will insist on it as a type of fairness and common ground, rather than using a system of one or the other. Fourth, some businesses may use it as a model for drafting their own contract terms, though not referring to it. Fifth, some may not specify any law as being applicable; in which case the international law will be determinative. Sixth, gradually over the next few decades, there will most likely be an increasing use of the international formulation and increase in the volume case-law. Thus, the co-existence of international standards and national laws represents no significant problems.

A larger view of history also indicates that the co-existence of international principles of Contract and Commercial Law are not a major concern. In the United States, individual state laws covering these subjects prevailed for a century. While calls for uniformity came in the eighteen forties,<sup>37</sup> it was not until the turn of the century that the drafting and enacting of uniform laws for the nation took place.<sup>38</sup>

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37. David Dudley Field called for the development of uniform legislation at that time. See DONALD B. KING, ET AL, *COMMERCIAL TRANSACTIONS UNDER THE UNIFORM COMMERCIAL CODE* 1-12 (1974).

38. *Id.* at 1-14.



There are some considerations for future law reforms which will take place on a national level. Those engaged in such efforts should start their drafting with the International Sale of Goods Convention language, adding or modifying only if absolutely necessary. The reformed national law should be consistent with the international law, along with comparative notes for the edification of those only versed in the former state or national laws. Such reform of some national laws may not take place for at least several decades, but when they do, the drafters should focus on the international framework. In regard to the drafting of regional or international legislation, Professor Roy Goode has given important insights into the problems of duplication of efforts and the need for some broader oversight.<sup>39</sup> Some considerations of keeping in mind the interests of developing nations has been pointed out by various members including S.K. Date-Bah,<sup>40</sup> Professor Patrick Osode,<sup>41</sup> Professor Mary Hiscock<sup>42</sup> and Professor Laureano Gutierrez.<sup>43</sup>

Building a framework of consumer law may be much more difficult and challenging. However, please note that the Universal Declaration of Consumer Rights has been in effect for a number of years as a broad base. Efforts by various members of the Academy to expand consumer protection have taken place over the years.<sup>44</sup>

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39. R. GOODE, REFLECTIONS ON THE HARMONIZATION OF COMMERCIAL LAW, 8-9, in COMMERCIAL AND CONSUMER LAW, NATIONAL AND INTERNATIONAL DIMENSIONS (1993).

40. S.K. Date-Bah, *Facilitating and Regulating Private Investment in a Developing Economy*, 22 PENN ST. INTN'L L. REV. (forthcoming 2003).

41. Patrick Osode, *State Contracts, State Interests and International Commercial Arbitration: A Third World Perspective*, in NEW DEVELOPMENTS IN INTERNATIONAL COMMERCIAL LAW AND CONSUMER LAW 293 (1998).

42. Mary E. Hiscock, *Changing Patterns of Regional Law Making in Southeast Asia*, 39 ST. LOUIS U. L.J. 933 (1995).

43. Larry Gutierrez, *The New Lex Mercatoria from a Third World Perspective*, (presented at the 11th Biennial Conference of the International Academy of Commercial and Consumer Law).

44. E.g., T. Bourgoigne & B. Stauder, *The Influence of EU Law on Swiss Consumer Law* (paper presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law); Norbert Reich & Axel Halfmeier, *Consumer Protection in the Global Village, Recent Developments in German and European Union Law*, 106 DICK. L. REV. 111 (2001); ULF BERNITZ, CONSUMER PROTECTION: AIMS, METHODS, AND TRENDS IN SWEDISH CONSUMER LAW (1976); W. VON MARSCHALL, CONSUMER CREDIT IN GERMANY, 377; DONALD KING, COMMERCIAL AND CONSUMER LAW FROM AN INTERNATIONAL PERSPECTIVE (1986); H. Maythofer, *Austria's Legislation on Product Safety*, in COMMERCIAL AND CONSUMER LAW FROM AN INTERNATIONAL PERSPECTIVE, *supra*, at 347; *Consumer Protection in Austria*, in COMMERCIAL AND CONSUMER LAW FROM AN INTERNATIONAL PERSPECTIVE, *supra*, at 40; CONSUMER PROTECTION IN CZECHOSLOVAKIA AND FINLAND (Thomas Wilhelmsson & Jiri Svestka, eds., 1989); D. Harlan, *Developments in Electronic Funds Transfer Systems and the Consumer*, COMMERCIAL AND CONSUMER LAW FROM AN INTERNATIONAL PERSPECTIVE, *supra*, at 365; A. Duggan, *Say Nothing with Words*, in NEW DEVELOPMENTS IN INTERNATIONAL AND COMMERCIAL AND CONSUMER LAW: PROCEEDINGS OF THE EIGHTH BIENNIAL CONFERENCE OF THE INTERNATIONAL ACADEMY OF COMMERCIAL & CONSUMER LAW 469 (Jacob Ziegel 1998);

Part of the problem is that many persons in the legal profession view consumer protection as local in nature and as a subject for primarily local attention. Yet as trade continues to be more international, as more complex goods often contain components from various countries, as new cross border technology and communications develop, and as travel abroad continues to accelerate, the need for a framework of more detailed international consumer law is needed. Since the Universal Declaration of Consumer Rights<sup>45</sup> was formulated under the United Nations and because consumer protection may be viewed as an integral part of world trade, this may be an appropriate subject for UNCITRAL to explore along with other consumer protection organizations and experts.

A rich basis of information and ideas has also been gathered in terms of the development of corporation law. Here too there is currently a lack of international mandated law, but the possibility of development exists. Insights into corporation law in various countries have been offered by a number of members including, but not limited to, Professors John Farrar, Raul Etcheverry, and Arcelia Quintana.<sup>46</sup> Part of the problem with obtaining an international system of corporate law is that corpo-

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1998); Allen Zysblatt, *Protecting the Israeli Consumer in the Electronic Age*, 22 PENN ST. INT'L L. REV. (forthcoming 2003); Pedro F. Silva-Ruiz, *Developments in Consumer Law in Puerto Rico, Case Brief: Costa v. Caguas Expressway Motors, Inc.*, 106 DICK. L. REV. 263 (2001); Alex Schuster, *The New Irish Product Liability Regime*, 39 ST. LOUIS U. L. J. 917 (1995); L. Gutierrez, *Comparative Publicity in the Hondorian Commercial Code and Consumer Protection Law*, in NEW DEVELOPMENTS IN INTERNATIONAL AND COMMERCIAL AND CONSUMER LAW: PROCEEDINGS OF THE EIGHTH BIENNIAL CONFERENCE OF THE INTERNATIONAL ACADEMY OF COMMERCIAL & CONSUMER LAW, *supra*, at 487; Ricardo Sandoval Lopez, *Chilean Legislation on Consumer Protection*, 39 ST. LOUIS U. L. J. 959 (1995); HANS GIGER, REFLECTIONS ON THE CHARACTER OF THE LAW AS A FUNCTION OF THE SYSTEM OF CLASSIFICATION (1998); Attila Harmathy, *Freedom of Contract* (paper presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law); *Commercial and Consumer Law*, in INTERNATIONAL ENCYCLOPEDIA OF COMPARATIVE LAW (R. Buxbaum & F. Madl, Eds., Max-Planck Institute 2000); E. Hondius, *Toward a European Law of Sales*, (paper presented at 11th Biennial Conference of the International Academy of Commercial and Consumer Law); *see also* E. Hondius, *Unfair Contract Terms Toward a European Directive*, in DONALD KING, ESSAYS IN COMPARATIVE, COMMERCIAL AND CONSUMER LAW 109 (1992). All of these writers give a rich basis of information on which to begin some more effective efforts in internationalizing consumer law.

45. UN Declaration of Consumer Rights (1985).

46. John Farrar, *Developing Corporate Governance in Greater China*, (paper presented at the 11th Biennial Conference of the International Academy of Commercial and Consumer Law); R. Etcheverry, *Conflictos de Intereses en la Direccion de Sociedades Anonimas*, in DONALD KING, COMMERCIAL AND CONSUMER LAW FROM AN INTERNATIONAL PERSPECTIVE, 301 (1986); Arcelia Quintana, *Integrator Companies in Mexico; Arcelia Quintana, Integrator Companies in Mexico, Lifesaver of Micro, Small, and Medium-sized Industries*, in NEW DEVELOPMENTS IN INTERNATIONAL AND COMMERCIAL AND CONSUMER LAW: PROCEEDINGS OF THE EIGHTH BIENNIAL CONFERENCE OF THE INTERNATIONAL ACADEMY OF COMMERCIAL & CONSUMER LAW, *supra* note 44, 397.

rations are often considered to be subject to the laws of the state of their incorporation. But there is no reason that some standards of a more general nature could not be imposed too, especially as their activities often go beyond state or national boundaries. Of course, there are issues as to the conduct of corporations operating internationally and their effects on both developed and underdeveloped countries. Also, the cultures of various countries need to be considered, as Professor Dan Henderson has often reminded us.<sup>47</sup>

Finally, in the area of negotiable instruments and banking, there is room for further international development in the years to come. Although there is part of a framework with the draft International Bills and Notes Convention, this has not been ratified by the nations and needs to be looked at again. In these areas, a number of members have contributed information and ideas. These include Professors Hal Scott and Benjamin Geva.<sup>48</sup>

The role of regional organizations of nations in law reform and future development of the international economic law is a subject in and of itself beyond the scope of this presentation. But it must be noted that regional organizations often develop legal standards which must be tested and may later serve as building blocks for more international standards. A number of Academy members have been involved in the development of these standards, including but not limited to, Professors Boris Kozolchyk with NAFTA,<sup>49</sup> William Neilson with the Southeast Asian Center,<sup>50</sup> Malcolm Smith of the Asian Institute,<sup>51</sup> and Raul Etcheverry with Mercosur.<sup>52</sup> Professors Ross Cranston and Mary Hiscock have also written about law reform in Southeast Asia.<sup>53</sup> The regional development may in some situations, make the drafting of international standards easier as the comparative analysis and synthesis has already partially been done.

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47. Dan F. Henderson, *Foreign Acquisitions and Takeovers in Japan*, 39 ST. LOUIS U. L. J. 897 (1995).

48. Hal Scott, *State of Banking Regulation in Developing Countries*, in *ESSAYS IN COMPARATIVE, COMMERCIAL AND CONSUMER LAW*, *supra* note 44, at 87; Benjamin Geva, *Settlement Finality and Associated Risks in Funds Transfers – When Does Inter-bank Payment Occur?*, 22 PENN ST. INT'L L. REV. (forthcoming 2003).

49. BORIS KOZOLCHYK, *TOWARD SEAMLESS BORDERS: MAKING FREE TRADE WORK IN THE AMERICAS* (National Law Center for Inter American Free Trade 1993).

50. See generally William Neilson, newsletters of the Centre for Asia-Pacific Initiatives, available at <http://www.capi.uvic.ca/pubs/newsletter.htm>

51. Malcolm Smith, Director, Asian Law Centre, Melbourne, Australia.

52. Raul Anibal Etcheverry, *The Mercosur: Business Enterprise Organization and Joint Venture*, 39 ST. LOUIS U. L. J. 979 (1995).

53. Mary E. Hiscock, *Changing Patterns of Regional Law Making in Southeast Asia*, 39 ST. LOUIS U. L. J. 933 (1995).

### B. Executive

The executive branch of the existing world government is multi-faceted and not within the scope of this presentation other than to give some overall perspective. It is not a singular type of unit such as we find in the United States with the president as chief executive. Nor is it like a number of the European countries where the prime minister also serves as the executive leader. Instead, the current executive branch of the world government is found in several organizations. One of these is the United Nations, both in the Secretary General and in the Security Council. Another aspect of international order which may be analogized to the executive is found in collections of nations.<sup>54</sup> In the economic realm, the World Trade Organization has some executive functions.<sup>55</sup> It is this body which governs most of the world legislation as to tariffs and free trade. It tries to enforce the treaties against tariffs or other barriers to free trade. It hears complaints from various nations and tries to settle them. If it is unable to settle these disputes in its executive function, there is a court as well.<sup>56</sup>

### C. Judicial

Commercial law also plays a role in the "judicial" branch of world government. If an international trade dispute arises concerning tariffs or other anti-competitive measures, then the help of the World Trade Organization Court may be invoked. This court will hear the arguments of both parties and render a decision. In a relatively short number of years, there have already been over fifty cases decided by the World Trade Organization's judicial branch.

A judicial system which exists for trying cases governed by the International Sale of Goods law is simply the use of regular courts in the various countries which have ratified the Convention. These courts have, as pointed out by Louis and Patrick Del Duca, tried a number of cases.<sup>57</sup> Already there is a body of law developing around the adequacy of notice in regard to allegedly defective goods.<sup>58</sup> There also are other cases on matters such as the use of the remedy of specific performance.<sup>59</sup>

In addition to the World Trade Organization court and the national courts which may try cases under the Convention for the International

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54. E.g., NATO, the G-8, EU, Org. of American States, Commonwealth, Org. of Arab States, OPEC, or specially created organization.

55. See The Law of the WTO, *supra* note 9.

56. See *id.* at 713.

57. Del Duca & Del Duca, *supra* note 14.

58. *Id.* at 222.

59. *Id.* at 228.

Sale of Goods, there are also proposals for international courts to try cases involving commercial disputes. An international commercial law court for appeals in disputes arising under the Convention for the International Sale of Goods was backed at a United Nations conference years ago by this writer.<sup>60</sup> It would be feasible to create and staff such a court to handle appeals involving the international sales convention. It could be effectuated through a simple addition to the current convention with specific ratification by the existing signatories. It could be administered by UNCITRAL with judicial appointments being well known commercial law authorities.

Another possible international procedural and court system to try commercial cases and disputes is a current American Law Institute and UNIDROIT formulation.<sup>61</sup> It creates an international procedure for trying the cases, merging Common Law and the Civil Law procedures.

In this regard, it may be noted that creation of an international procedural system is most difficult because of some very basic differences between the Common Law and the Civil Law systems. The Common Law is based on the adversary system, with the opposing lawyers arguing the case with their pleadings and trying it by producing evidence, examining, and cross examining witnesses, and making arguments on the issues they raise. The judge serves as a referee occasionally ruling on the objections raised or evidence submitted. The decision is made in many cases by a jury. By contrast, the Civil Law system is known as inquisitorial. The judge plays a major role in collecting the evidence and defining the issues; the lawyers, though making arguments, play a relatively minor role. The judge or judges make the decision. In regard to obtaining evidence, common law lawyers often have considerable discovery power through interrogatories or depositions, while civil law lawyers have much less. It was the job of the drafters to produce a system which would be acceptable to both. The proposed procedural system is one which should be usable by both common law and civil law lawyers and judges. The new ALI procedural system also provides that each jurisdiction shall have special judges appointed to hear such matters from its regular court system. Judges under this new system would be specially designated from existing courts, and would specialize in the handling of the international commercial type cases brought in that particular jurisdiction. It seems likely that both the appellate international commercial law court suggested for cases in which the sales convention was instru-

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60. U.N. COMMISSION ON INTERNATIONAL TRADE LAW, *UNIFORM COMMERCIAL LAW IN THE TWENTY-FIRST CENTURY: PROCEEDINGS OF THE CONGRESS OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW* 105, 251 (1995).

61. A.L.I./UNIDROIT, *Principles and Rules of Transnational Civil Procedure*, Preliminary Draft No. 3 (2002).

mental and this system of courts and procedure proposed by the American Law Institute will be seriously considered in the relatively near future.

While it is not within the scope of this presentation, one must always be cognizant of the other world courts, which have developed in the political realm, including the International Court of Justice, various criminal tribunals, and the newly established International Criminal Court<sup>62</sup> for trying war crimes.

## II. Conclusion

While the "unknown world government" is not embodied in a single constitution or organized legislation, it does exist in a combination of treaties, organizations, coalitions, and courts. Its growth is incremental in nature. It is a de facto type of government, a more international way of thinking, suggested by Professor Sono<sup>63</sup> and this author<sup>64</sup> as well as an even broader type of viewing suggested herein.

While the legislative, executive, and judicial functions are not always clearly defined, these categories of governmental functions do definitely exist on a world-wide basis. Commercial law plays a very important role in this new world government.

Indeed, the efforts of various members of the Academy have contributed in a major way to this development. Some of their proposals for future developments promise to further develop and solidify the broad framework of international commercial law. The members of the Academy, in going beyond their national laws, have played the role of world citizens, a concept also in need of further exploration. It is important for nations and individuals to recognize these developments because they may impact on both present and future decision making.

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62. See e.g., Leila Sadat, *THE INTERNATIONAL CRIMINAL COURT AND THE TRANSFORMATION OF INTERNATIONAL LAW: JUSTICE FOR THE NEW MILLENNIUM*, (2002). A member of the Academy of Commercial and Consumer Law from South Korea, Professor Song, has been named as a judge on this court.

63. Professor Kazawaki Sono was honored by the Academy for his direction of UNCITRAL and the worldwide adoption of the Convention for the International Sale of Goods.

64. Donald B. King, *Globalization Thinking: Commercial and Consumer Law Illustrations*, 39 ST. LOUIS U. L. J. 865 (1995).

