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In April 1999, the Hague Conference on Private International Law's Special Commission on Maintenance Obligations voted to begin work on a new convention on maintenance obligations. The negotiations on the maintenance convention were far more difficult and challenging than the 2000 Convention on the Protection of Incapacitated Adults or the 1996 Convention on the Protection of Minors. This is because all states have the same approach to jurisdiction, applicable law and enforcement of judgments in cases concerning children and incapacitated adults. With regard to maintenance, however, there are large differences in the private international law rules between common-law countries, in particular the United States, and the civil-law countries of the European Union.

The delegates to the Special and Diplomatic Sessions of the Hague Conference were able to achieve harmonization on issues of direct jurisdiction and applicable law. This was accomplished by an agreement not to include within the convention any rules on direct jurisdiction, rather to only include rules on indirect jurisdiction. The delegates also agreed that there would not be rules on applicable law in the convention but that there would be a separate protocol that would cover that subject.

However, with regard to problems of modification of the original maintenance determination, the delegates were unable to reach agreement. This means that the Convention has several gaps and fails to address many modification scenarios.

This paper discusses the differences between the private international law rules with regard to maintenance between the United States and the civil-law countries of the European Union. It indicates how an agreement was reached with regard to rules of jurisdiction, both direct and indirect, and applicable law. It also discusses the difficulties with regard to modification scenarios. It finally ends up discussing the problems that are still left after the conclusion of the Hague Convention and the difficulties these problems will cause the international child support system. The paper shows how not harmonizing modification cases will lead the international support system to one of two undesirable results. The first would be that, for a large number of cases, there would be two valid support orders in existence. The second result is that, in order to avoid duplicate enforceable orders, creditors would have to modify where the debtor habitually resides. This means that creditors of limited resources would face significant burdens in pursuing a modification.

Note that the author was a member of the United States delegation for the Hague Convention on Child Support and Other Forms of Family Maintenance, as well as the 2000 Convention on the Protection of Incapacitated Adults and the 1996 Convention on

the Protection of Minors. The views expressed in this paper are solely those of the author and do not necessarily represent the views of the United States Department of State or the United States government.