

**Joint Editorial Board on International Law
October 4, 2008, Meeting
Embassy Suites Chicago Downtown Lakefront
511 N. Columbus Drive
Chicago, IL 60611
888-903-8884**

9:00 a.m. – Call to Order

AGENDA

1. Introductions

Committee Roster (attached)

2. Reports From Recent Prior Meetings (attached)

Report of Activities, June 28, 2008
Notes from June 5, 2008, Conference Call
Report of Activities, December 12, 2007

3. Memorandum of Understanding (attached, for information)

4. Review of Current ULC International and Transnational Projects [**Information Items**]

a. List of ULC International and Transnational Projects (attached)

b. Drafting Committee on Unsworn Foreign Declarations Act [**Kathy Patchel**]

The ULC adopted the Uniform Unsworn Foreign Declarations Act in July 2008. The Act will be submitted to the ABA House of Delegates for approval in February 2009, and ULC will be asking the International Law Section to co-sponsor the resolution.

c. Drafting Committee to Amend the Uniform Interstate Family Support Act [implementing the Hague Family Maintenance Convention] [**Bill Henning and John Sebert**]

The ULC adopted the amendments to UIFSA implementing the Family Maintenance Convention in July 2008. The President has transmitted the Convention to the Senate for advice and consent, and proposed federal legislation implementing portions of the Convention has also been forwarded by the administration to the Senate and House of Representatives. It is unlikely that either the

Convention or the federal legislation will be acted upon this year, although it is possible that there could be action on one or both items if, as expected, Congress returns for a post-election session. The UIFSA amendments will be submitted to the ABA House of Delegates for approval in February 2009, and ULC will be asking the International Law Section to co-sponsor the resolution.

d. Committee for Implementation of the UN Convention on Independent Guarantees and Stand-by Letters of Credit [John Sebert]

This committee, chaired by Ed Smith, began work in the fall of 2007. It made a report to the ULC Executive Committee in June 2008 indicating that it believed that ratifying the treaty was in the best interests of the United States and that there appeared to be substantial support in the banking, financial and business community for ratification. The Committee's memorandum then outlined a number of options that the Committee, in consultation with representatives of the State Department, was considering for implementation of the treaty and recommended that the Committee be authorized to continue its work. The ULC Executive Committee approved those recommendations. The leadership of the Committee is planning for the Committee's in-person meeting, December 5 – 6, in Chicago.

e. Drafting Committee on the Hague Convention on Choice of Court Agreements [Kathy Patchel and Louise Ellen Teitz]

This Committee, with Rex Blackburn as chair and Kathy Patchel and Louise Ellen Teitz as co-reporters, had its first meeting in June 2008. The chair and co-reporters are preparing for the Committee's next meeting, November 21 – 22, in Portland, OR. David Stewart has agreed to serve as a Consultant to the Committee.

f. Committee to Implement the UN Convention on E-Commerce [Henry Gabriel]

The ULC Executive Committee approved the formation of this Committee in July 2008. Henry Gabriel is chair, and Professor Ben Beard of the University of Idaho College of Law is reporter. They are preparing for the Committee's first meeting, October 31 – November 1, in Washington, DC.

5. Reports from the State Department on Plans for Obtaining Senate Advice and Consent [**Hal Burman and Keith Loken**]

UN Convention on Receivables in International Trade

Hague Family Maintenance Convention

Hague Securities Convention

6. Discussion of Current Projects of International Organizations that Have Been Identified as Likely of Interest [**Discussion Items – Are there specific steps that the JEB should take or recommend concerning any of these items?**]

UNCITRAL Transportation Convention and its Impact on UCC Article 7 [**Henry Gabriel**]

Attached is a memorandum, provided by Hal Burman, discussing the impact of this Convention on UCC Article 7.

Hague Project on Choice of Law in International Contracts [**Louise Ellen Teitz**]

*At the April 2008 meeting of the Hague Conference Council on General Affairs and Policy, the Permanent Bureau was asked to explore with governments and interested experts, the feasibility of drafting a non-binding instrument on choice of law in international contracts and also to explore the specific form that such an instrument might take. The Bureau was asked to make a recommendation to the Council in 2009. On the June 2008 conference call of the JEB, Louise Ellen Teitz suggested that the JEB follow the Hague Project on Choice of Law in International Contracts. David Stewart said that State is wanting to follow this closely, is setting up a working group to look at it, and he invited broad participation. **Is State establishing a working group and, if so, how can the JEB, the Section and the ULC best participate?***

Hague Project on Treatment of Foreign Law [**Henry Gabriel and Louise Ellen Teitz**]

On the June 2008 JEB conference call, Louise Ellen Teitz also suggested that the JEB monitor this project. In September, Henry Gabriel forwarded the attached Hague Conference Feasibility Study on the Treatment of Foreign Law that was developed at a February 2007 meeting of experts. Henry's e-mail stated in part:

The project, which is intended to culminate in a treaty, is for judicial cooperation among the various countries for the purpose of providing an avenue for one country to get definite answers about what the law is in another country. What the project hopes to achieve is some mechanism where the courts of one country can get definitive answers from another country as to that country's law on a given point.

We have a similar uniform law: the certification of questions act. This act provides for certification of questions of law to a given state from another state or from Mexico or Canada. It could be that we might want to revise the act to provide for other countries to certify questions- or (if this Hague project is of interest to the ULC) we may want to consider a wholly new uniform law that would be consistent with the convention.

How this will work with federal law is a much more complex question, and I don't know what interest the federal government will have in this project either in general or with coordinating with us.

I discussed this project at some length a couple of weeks ago with Hans van Loon, the Secretary General of the Hague Conference, and he is quite interested in our possible involvement. He has asked me to attend the meeting on the project in mid-October as an expert (I would not be representing the US govt,) and at this time I am planning on attending.

7. Discussion of Possible Future Projects Identified for Further Discussion
[Discussion items -- Are there specific steps that the JEB should take or recommend concerning any of these items?]

Mareva-style Injunctions [Glenn Hendrix]

Attached is a report from the Section of International Law's International Litigation Committee recommending consideration of a Model Law Affording "Mareva" Injunctions.

Uniform or Model Statute for Implementation of the Consular Convention in Light of Medellin [Bob Lutz]

UNCITRAL Project on Commercial Fraud [Howard Swibel]

This project contemplates publication of a checklist for use by businesses to assist in preventing or identifying fraud. The Canadian Uniform Law Conference has expressed some interest in

this project. Is the International Law Section interested in the project? Are other ABA sections, such as Business Law, interested? The project has been mentioned to the Commercial Finance Association.

8. Report on Plans for the ABASIL/Society of International Law Task Force on the Implications of *Medellin v. Texas* [**Jeff Golden**]

9. Further Discussion of the Role of the JEB and its Relationship to the ULC Committee on International Legal Developments

10. ABASIL/ULC Collaboration and Collaboration with Other Organizations

Participation of ABASIL Members as Advisors on NCCUSL Drafting Projects [**John Sebert**]

Identification of ULC Commissioners who Can Serve as Advisors or Observers to ABASIL Committees that are Considering Matters Related to ULC Areas of Interest

Proposed Program at Spring ABASIL Meeting on the Role of State and Federal Law in Treaty Implementation After *Medellin* [**John Sebert and others**]

Update on uniform law activities in other countries, including Canada, Mexico, Australia and New Zealand, and plans for strengthening relationships with the Australia/New Zealand Standing Committee of Attorneys General [**Martha Walters**]

Consideration of Inviting the Canadian Uniform Law Conference and the Mexican Uniform Law Center to Participate in the JEB as Liaison Members

11. Update on ABA SIL Activities (September 2008 E-Update, attached)

12. Other Business

Adjournment No Later than 5:30 p.m.

Set out below are links to some of the Conventions and Treaties that we may be discussing:

1. All the Hague Conventions are readily available at <http://www.hcch.net>. The family law conventions (there are quite a few) can all be found at http://www.hcch.net/index_en.php?act=text.display&tid=10#family. The 2006 Intermediated Securities Convention is at http://hcch.e-vision.nl/index_en.php?act=conventions.text&cid=72. The 2005 Choice of Court

Agreements Convention is available at
http://www.hcch.net/index_en.php?act=conventions.text&cid=98.

2. UNIDROIT's conventions are available at <http://www.unidroit.org/english/conventions/c-main.htm>. You'll see that the last three entries cover the Capetown Convention itself, the first protocol on aircraft equipment, and the second protocol on railway rolling stock.
3. UNCITRAL's conventions can be found at http://www.uncitral.org/uncitral/en/uncitral_texts.html. Specific links to the ones you mentioned are as follows:

UNCITRAL Assignments (Receivables):
www.uncitral.org/pdf/english/texts/payments/receivables/ctc-assignment-convention-e.pdf.

UNCITRAL convention on E-commerce:
http://www.uncitral.org/pdf/english/texts/electcom/06-57452_Ebook.pdf or
http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2005Convention.html.

UNCITRAL Convention on Independent Guarantees (letters of credit):
<http://www.uncitral.org/pdf/english/texts/payments/guarantees/guarantees.pdf>