

June 27, 2008

MEMORANDUM

**TO: ULC Scope and Program Committee
ULC Executive Committee**

**FROM: Michael P. Sullivan, ULC Co-Chair, Joint Editorial Board for
International Law
William M. Hannay, ABA Co-Chair, Joint Editorial Board for
International Law**

SUBJECT: Report of Activities

The JEB met by conference call on June 5, 2008. Participants, in addition to the co-chairs, were JEB members King Burnett, Henry Gabriel and Jeffrey Golden; JEB alternate members Ann Walsh Bradley, David English, William Henning, Harriet Lansing, Louise Ellen Teitz, and Peter Winship; ULC Division Chair Kathy Patchel; ULC International Legal Developments Committee chair Howard Swibel; ULC Executive Director John Sebert; and liaison members Harold Burman and David Stewart of the State Department Office of Private International Law.

This memorandum provides an informational report on the work of the JEB. No action matters are being presented to the Scope and Program Committee or the Executive Committee.

Report of the ULC Committee on International Legal Developments (ILDC)

The JEB reviewed and discussed the report of the ILDC, which had met by conference call on May 28. The report of the ILDC is attached, with notes from the ILDC discussion in bold and notes from the JEB discussion in italics. Major points of discussion during the JEB call are summarized below.

UN Convention on Electronic Commerce

During this discussion, Hal Burman and David Stewart endorsed the idea that ULC should consider creating a committee that would work with the Department of State on implementation of the treaty, similar to the work of the committees on the Receivables and Letters of Credit conventions. A proposal to that effect has been submitted to the ULC Committee on Scope and Program for consideration in July.

Other international conventions to monitor

The ILDC report indicates the international projects that are in the pipeline that the ILDC has decided to monitor:

UNIDROIT Protocol on Outer Space Assets, an Ancillary to the Cape Town Convention on International Interests in Mobile Equipment

UNCITRAL Project on Commercial Fraud

UNCITRAL Arbitration Rules

Hague Project on Cross Border Mediation in Family Matters

Hague Project on Choice of Law in International Contracts

During the JEB conference call, Louise Ellen Teitz recommended that the JEB also follow this project closely. David Stewart reported that the State Department is setting up a working group to examine this project and invited broad participation in the working group.

Possible Hague Protocol to the Family Maintenance Convention on international recovery of maintenance in respect of vulnerable persons

Louise Ellen Teitz also recommended that the JEB look into the Hague access to foreign law project.

Report from the ABA Section of International Law and Practice

The JEB then discussed the report of the Section, which is attached.

Task Force on *Medellin*

Jeff Golden reported that the ABASIL was planning to create a joint task force with the Society of International Law to explore the implications of *Medellin*. King Burnett asked whether it would be possible for the ULC to participate in the task force. Jeff Golden said that would be very useful, and he stated that Kathy Patchel's paper on the implications of *Medellin* was outstanding and would be very helpful to the task force. He said that ABASIL also hopes to have representatives of the State Department and the courts participate on the task force. John Sebert will be the ULC contact for receiving and distributing information about the task force.

UNCITRAL Transportation Convention

The ABASIL International Transportation Committee is undertaking a comprehensive review of the current UNCITRAL draft in comparison with the 2003 revision of UCC Article 7. Hal Burman noted that Henry Gabriel was the chair of the UCC 7 drafting committee and is drafting the report for the ABASIL committee. He also stated that, at this point, he did not know what type of process might be necessary for implementing this treaty.

Mareva-Style Injunctions

The ABASIL International Litigation Committee is considering whether to recommend the drafting of federal and uniform state legislation to provide for Mareva-style injunctions, or “freezing orders”, to be issued when it appears that a debtor is scheming to defraud creditors. The JEB will discuss this issue further at its October 4, 2008, in-person meeting.

Interim Relief in Cross-Border Litigation

The International Litigation Committee is also considering whether to recommend uniform state legislation providing for interim relief in situations in which proceedings on the merits are taking place outside the United States but the defendant’s assets are located in the U.S. If the Committee is able to make more progress on this project, it will be discussed further at the JEB October meeting.

Co-chair Bill Hannay suggested that it may be useful – both for ABASIL and ULC – for ULC to identify one or more individuals who can participate as advisors or observers to ABASIL committees or task forces that are working on projects such as the above, particularly to provide advice concerning ULC polices and processes. Co-chair Mike Sullivan and John Sebert agreed to work to identify such individuals.

Bob Lutz had suggested that in light of the substantive issues in *Medellin* it might be appropriate to consider recommending a uniform or model state law for implementation of the Consular Convention. The JEB will consider that matter at its October meeting.

Status Report on Selected Commercial Law Projects and Treaties

Hal Burman distributed the attached report.

October Meeting

The next in-person meeting of the JEB will be Saturday, October 4, 2008, in Chicago. The full JEB will have a conference call in early September to further identify topics for consideration at the meeting.

Attachments.

Cc: Joint Editorial Board for International Law
ULC Committee on International Legal Developments