

December 12, 2007

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 on November 30, 2007, at the Hilton McLean Tyson's Corner in McLean, Virginia. Attendees, in addition to the co- chairs, were JEB members King Burnett and Jeffrey Golden; JEB alternate members David English, William Henning, Harriet Lansing, Robert Lutz, Louise Ellen Teitz, and Peter Winship; ULC Division Chair Kathy Patchel; ULC President Martha Walters, Robert Stein, Chair of the ULC Executive Committee, and John Sebert, ULC Executive Director; 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 meeting. No action matters are being presented to the Scope and Program Committee and or the Executive Committee.

Methods for Implementing International Treaties and Conventions

The JEB had an extensive and useful discussion of the process of developing international treaties and conventions related to private law and the various possible methods of implementing those treaties and conventions. The discussion was led by Kathy Patchel and focused in part on her memorandum of September 28, 2007, on this topic, and David Stewart and Hal Burman of the State Department participated fully in the discussion. A copy of Kathy Patchel's memorandum is attached.

Review of Current ULC International and Transnational Projects

The JEB received reports concerning the status of current ULC international and transnational projects and focused in particular on the implementation issues created by the projects that are related to treaties or conventions:

Drafting Committee on Unsworn Foreign Declarations Act.

Drafting Committee to Amend the Uniform Interstate Family Support Act (in relation to the Hague Family Maintenance Convention, which the United States signed at the conclusion of the diplomatic conference at the end of November).

Committee for Implementation of the UN Convention on Independent Guarantees and Standby Letters of Credit (from which is Scope and Program Committee and the Executive Committee are receiving a separate report). The JEB encouraged this committee to exercise its best efforts to obtain wide attendance at the stakeholders meeting the committee is planning to hold early in 2008, and particularly to seek good participation from companies and industries that are likely to be frequent users of standby letters of credit issued outside the United States. It was agreed that the ULC and the ABA Section on International Law would collaborate to provide widespread notice of this meeting.

Project to Create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in North America. Jeff Golden stated that the ABA Section is having a program on international aspects of nonprofit associations at its spring meeting in early April 2008. John Sebert will put Marilyn Phelan and Harry Haynsworth of the Committee in touch with Jeff Golden about possibly making a presentation about the harmonization project at the spring meeting.

Study Committee on the Hague Convention on Choice of Court Agreements (from which the Scope and Program and Executive Committees are receiving a separate memorandum).

Hague Convention on Securities Held by Intermediaries. We understand that the Program and Scope Committee and the Executive Committee also will be receiving a separate memorandum on this matter.

Review of Section of International Law Projects

Professor Robert Lutz briefed the JEB on two matters of great interest to the Section related to the regulation of the legal profession and particularly the extent to which attorneys licensed in another country may practice in the United States for limited purposes or limited periods of time.

Revisions of the ABA Model Rule for the Licensing and Practice of Foreign Legal Consultants. The prior version of this rule has been adopted in 28 states. As the result of a collaborative effort by the ABA Section of Legal Education and Admissions to the Bar, the International Law Section, and the ABA Center for Professional Responsibility, a useful revision of this rule was adopted by the ABA House of Delegates in August 2006. The revised rule has been adopted in three states – Delaware, North Dakota, and South Carolina – and the Section is desirous of assistance in seeking the quick adoption of the rule in other states. The Conference of Chief Justices has endorsed the revised rule. In response to

questions as to whether the ULC could adopt the rule and designate it as a ULC model rule, ULC members of the JEB indicated that it is not the practice of the ULC to adopt as its own a statute or rule drafted by another organization, and that the general practice over the years has been to leave to the ABA the development of model rules related to the regulation of the legal profession.

Application of Existing Temporary Practice Rules to Foreign Lawyers. Professor Lutz then discussed a proposed revision of a Pennsylvania rule on multijurisdictional practice that he indicated provided a better vehicle for permitting temporary practice in the United States by foreign lawyers than does the ABA Model Rule on Temporary Practice, which was a product of the ABA Multijurisdictional Practice project earlier this decade.

There was discussion of the possibility that the International JEB, through some vehicle such as a newsletter, might call these two projects to the attention of commissioners and members of the ABA Section.

Professor Lutz then described, and the JEB discussed, a proposal for a possible ULC project to develop “Guidance Notes on Arbitrator Conduct for Private Commercial Disputes in the NAFTA Region.” It was agreed that ULC Executive Director Sebert would provide Professor Lutz and the other ABA members of the JEB copies of the Scope proposal form and guidelines in the event they wish to propose this or other projects for consideration by the Scope and Program Committee at a later time.

Professor Louise Ellen Teitz then described another possible ULC drafting project that might provide authority for U.S. courts to freeze a bankrupt or close to bankrupt debtor’s assets at the request of a foreign court when the debtor appeared to be about to divert assets that should be available to creditors. ABA members of the JEB said that they will consider further developing this proposal and possibly making a proposal to Scope and Program at some future time.

Current State Department Priorities

Mr. Burman indicated that some of the major current priorities of the Office of Private International Law include obtaining the advice and consent of the Senate with respect to the UN Convention on the Assignment of Receivables in International Trade (as to which the ULC Committee on this topic assisted in the preparation of many of the documents associated with the advice and consent process) and the Hague Securities Convention. Mr. Burman indicated that he had begun informal consultations with relevant federal agencies and Senate committees on the Receivables Convention in anticipation of beginning the formal “inter-agency clearance process” (which is necessary in order to obtain the Secretary of State’s approval for seeking the President’s agreement to submit a treaty for advice and consent). He is hopeful that the inter-agency clearance process on the Hague Securities Convention can begin early in 2008. With respect to both conventions, Mr. Burman said he hoped that Senate advice and consent might be obtained by late spring or early summer 2008.

Mr. Burman indicated that the time for the U.S. to sign the 2005 UNCITRAL Convention on E-Commerce will expire early in 2008 and that the State Department is considering what options there are for ensuring compliance in the U.S. with sufficient certainty that the Department can recommend that the U.S. sign and eventually ratify the Convention. It was noted that Commissioners Henry Gabriel and Patricia Fry were involved as members of or observers to the U.S. delegation. It was agreed that in the future it would be beneficial to have a process by which ULC representatives could be actively involved with the OPIL staff at the stage of preparing to recommend that the U.S. sign conventions that are related to ULC products or other matters of state law. Mr. Burman and Executive Director Sebert agreed to collaborate to develop such a process..

Current Projects of International Organizations and Upcoming Meetings and Conference Calls Related to Those Projects

Professor Winship led a discussion of ongoing private international law projects of UNCITRAL, UNIDROIT, the Hague Conference, and the Organization of American States. His memorandum concerning these projects is attached. Mr. Burman supplemented the discussion by noting a number of meetings and conference calls concerning some of these projects that are likely to occur over the next few months. Mr. Burman's list is also attached.

It was agreed that Mr. Burman would revise and expand the current list to indicate the stage of each project (e.g., is a conference on the topic being considered, actually planned, currently in process and at what stage, or has the convention been completed and at the signing or ratification stage?) and the OPIL staff member who is closest to each project. Mr. Burman will circulate the revised list as soon as possible and then will provide updates with some frequency. The documents will be circulated to the International JEB, to appropriate individuals and committees within the ABA Section of International Law, and to the ULC Committee on International Legal Developments.

During the discussion of the ongoing projects, two projects provoked particular interest. UNCITRAL has developed a legislative guide on secured finance, which is intended to provide countries that do not have adequate personal property security legislation the basic essential of such legislation, and UNCITRAL is considering developing a model law based on that guide. UNIDROIT is also developing a model law on equipment and commercial leasing for consideration by countries in need of such legislation. There was discussion of the possibility of using the Model Tribal Secured Transactions Act as the basis for creating a model secured transactions statute that might be useful for other countries, such as those in Latin America, and for using UCC Article 2A as a similar basis for a model commercial leasing statute. The possibility of obtaining USAID funding for such projects, particularly if focused on Mexico or Latin America, was discussed. Mr. Burman and Mr. Sebert agreed to explore those possibilities.

Role of the JEB

The meeting concluded with a further discussion of the role of the JEB and its relationship to other entities within the ABA Section and the ULC. It was agreed that the ULC International Legal Developments Committee and various committees of the Section should review the lists of current projects of international organizations and make recommendations to the JEB concerning which of the ongoing projects are of such interest to the ULC or the Section that the JEB, or other entities within the two organizations, should monitor the projects closely or seek direct involvement in the projects.

It was agreed that Executive Director Sebert would explore with his staff and ABA Section leadership the possibility of producing a periodic newsletter of the JEB that would provide commissioners and section members with current information about international projects and issues of interest.

Co-Chair Sullivan invited members of the JEB to provide suggestions for specific topics that should be discussed at the next JEB meeting. Since many JEB members will be attending the American Law Institute Annual Meeting, it was tentatively agreed that the next meeting of the JEB will be on Sunday, May 18, 2008, in Washington, D.C., the day before the opening of the ALI meeting. Holding this meeting, however, is subject to the availability of funds in the JEB budget to support a second meeting.

Attachments.

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