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EVALUATION SESSION

Evaluation carried out by:

Chairman: Chief Judge Tina L. Brozman, United States Bankruptcy Court (USA)

Panel: Dr. M.I.M. Aboul-Enein, Cairo Regional Centre for International Commercial Arbitration (Egypt)

The Hon. Mr. Burton R. Lifland, United States Bankruptcy Court (USA)

The Hon. Mr. Justice Farley, Superior Court of Justice, Ontario (Canada)

The Hon. Mr. Justice Adolfo Rouillon, Court of Appeal (Argentina)

Dr. M.I.M. Aboul-Enein

There is no doubt that the adoption of the UNCITRAL Model Law will be a great improvement and an important step forward for our legal system in Egypt and in other countries of our area. That law will secure the rights of the creditors, debtors and lead to the best evaluation of the assets. This definitely will enlarge and encourage international trade and attract more foreign investment in the area. However, the Model Law has yet to be intensively and effectively promoted.

The Cairo Regional Centre for International Commercial Arbitration will organise and international conference on this subject to be held under the auspices of the Arab league and hopefully with the co-operation of UNCITRAL and INSOL International. It is worth mentioning that the insolvency of civil debts is governed in Egypt and in some other countries in the civil codes, Articles 234 to 259 of the Egyptian Civil Code are applicable on insolvency related to civil debts, while bankruptcy rules are

exclusively explicable on merchants according to the New Egyptian Law of Commerce No 17/99. The adoption of the Model Law in Egypt and in other countries of the area would be a good opportunity to unify our rules on insolvency in both jurisdictions. It is true that foreign creditors would have an equal opportunity to get to the Egyptian Courts according to the decision of the Supreme Constitutional Court of Egypt which held that this is a basic and human right and according to Article 28, 29 and 296 of the Egyptian Code of Civil & Commercial Procedures, but definitely precious time might be lost in preparing the documents, translating them, certifying them to be submitted to the Courts having jurisdiction. The Model Law would solve this problem, facilitate the proceedings through the contact and co-operation between the judiciaries as provided for in the Model Law. However, it is true that the adoption of the Model Law would not end all the problems. It would be an excellent step forward but its application would result in differences of opinion and different ways of application that would need another effort for the unification of interpretation and application.

Some differences of opinion were expressed yesterday. Some important issues were raised:-

What is a foreign main proceeding defined in Article 2 B? Would we give the economic weight the full priority? Would we eliminate completely the state of incorporation, as an element?

There should be equality between foreign and local creditors, how can we best secure this equality? Would Article 6 be invoked here to give priority to the local creditors on the local assets? Would the exception swallow the rule? What is the definition of public priority in this regard? Also some of the questions were raised about who would be responsible for the costs of communication between the judges, and the translation when it is needed, what should be done in unifying the terminology even if we use one language?

Would communication between judges on the proceedings be in the presence of a counsel? Would communication be done on substantive issues even with the approval of the counsel or upon agreement? How do we appoint the liquidator? Shall we use a list, the next to come on the list? Shall we depend on the choice of the majority of creditors? Would we require the approval of the court of this choice? If we would want to secure equality, how are foreign liquidators be chosen or appointed? So many questions that need serious efforts to have them answered to determine ways of application.

I think we must have an organisation to be responsible for research, unification, interpretation and training of judges and other concerned officials. In the course of my work as a member of the Institution and Capacity Working Group assigned by the World Bank to assist in developing standards and guidelines for sound insolvency system. I submitted a proposal to establish under the auspices of the World Bank or a highly influential organisation a self governing global centre of research, training and information in the field of cross-border insolvency which would be comprehensive in its coverage and new in its depth of focus on practice and contract of proceedings. This would be accomplished by creating a database, issuing periodicals, publications, newsletters and holding international and regional conferences.

Hon. Mr. Justice Burton R. Lifland

Yesterday we used the device of a Hypothetical case study to explore the complex number of challenges that are presented in a cross-border international corporate bankruptcy proceeding or proceedings. Generally, hypotheticals are a composite of many cases and experiences designed to explore significant problems and issues not usually found in one single actual case. However, the Neptune/Juno Group is no longer an artificially created composite illustration. Similar cross-border cases are arriving in the courts as we meet. Indeed, a Neptune/Juno type case was filed in three different countries in the past two and a half weeks with a tentatively designated main proceeding pending before me, two more in Germany, our host country, one in Brazil with more possibly following, involving main and non-main issues arising out of some 150 countries where the 141 group affiliates do business. So as you can see we are in the real world and no longer dealing with hypotheticals. These cases that we are discussing at this colloquium are real and can cause substantial economic and social dislocation unless steps are taken promptly to preserve value before a meltdown occurs.

In the ideal case, bankruptcy proceedings are commenced in only one country where the court oversees an orderly distribution of global assets aimed at the equitable treatment of all creditors. Courts in all the countries where the debtor has assets cooperate in the proceedings, costs are minimized and efforts are made to minimize the inconvenience to foreign creditors. This is the regime generally referred to as “universalism”. At the other extreme, insolvency proceedings are commenced in every country where the debtor has assets as courts seek to assist local creditors in dismembering the debtor’s local assets. Such proceedings result in duplicative expenses and undermine efforts to distribute assets in a unified fashion. This is the regime known as “territoriality”.

While not specifically articulated yesterday, there does seem to have been a consensus developed that a modified universality approach to cross-border cases is the most sensible approach if a balance can be struck to recognizing the interests of local creditors without jeopardizing global enterprise value or decreasing assets available for distribution. A point was made by one speaker to the effect that there could be “transactional gain” where assets subject to local creditors claims are expatriated to the foreign forum. This is so since losses from local deference to the main proceedings in some cases will be offset by gains from foreign deference to the local forum in others. A universalism application would, in the long run, increase values available for distribution to all creditors. On the other hand, a pure territorial or grab rule approach inevitably causes multiple bankruptcy cases and results in the transfer of resources from creditors into the pockets of attorneys and other bankruptcy professionals. That may not be a popular concept for some of people meeting tonight and tomorrow, but it is a concern with respect to preservation of values for ultimate distribution to creditors in the most efficient way.

The Model Law essentially presents us with a regime of “modified universalism” for the enacting nation. It allows relief to the foreign representative conditioned upon a mix of territorial and universal concerns. What emerged from yesterday’s discussion was a recognition that some of the cross-border problems were not solvable in a particular local regime because of either local law or rules or policy. For some access

and recognition of a foreign representative is difficult if not impossible; co-operation and co-ordination with a foreign court is not easily achieved in a civil law state and repatriation of assets subject to local interests is precluded, perhaps by law or by national policy. Yet several speakers indicated that each of these problems would be totally solvable if the Model Law was adopted domestically. It was also suggested that adoption of the Model Law would make many judges more comfortable in granting access, recognition and relief to foreign representatives as local barriers to harmonizing relevant foreign proceedings with local interest would be eliminated. In this regard it was pointed out that, without the Model Law or the body of legal precedent often found in common law jurisdictions courts are traditionally reactive rather than proactive. A proactive court is necessary in fast moving cross-border cases where triage efforts are often required. All of the foregoing was brought out as the group explored a series of presented issues from the hypothetical; First, under the law as it exists currently, and again under possible application of the Model Law provisions. All of this was most enlightening and at least makes me more anxious to see a universal adoption of the Model Law, which as was pointed out, is essentially procedural and not substantive. It became apparent in the discussion that for a number of judges and insolvency regimes the Model Law did not appreciable add to their current ability to attack the problems or issues presented as they already had systems in place which permit a degree of flexibility and discretion for tolerating foreign requests for relief under considerations of comity. For them, a significant body of jurisprudence exists as respects the exportation or importation of foreign representatives requesting relief under considerations of comity. Many of the aspects of cross-border harmonization such as access and recognition that are contained in significant articles of the Model Law including, specially pertinent for us Articles 25 through to 27, on co-operation and communication with the courts are already in current practice and invoke the use of protocols to achieve co-ordinated administration of court proceedings. Widely recognized and used with some degree of court involvement or imprimatur, these protocols can often inform the ultimate restructuring of the main, non-main, ancillary or concurrent proceedings and have been used amongst civil and common law regimes alike, although predominantly among common law regimes.

As was the case in prior colloquia, there was a general consensus that courts can or should be permitted to communicate directly on procedural or administrative matters, but not on substantive matters without participation of parties in interest in some appropriate form. Perhaps by advance consent or actual participation but certainly not through an ex parte communication made without appropriate notice imparted to all of the parties.

Some courts are co-ordinating their respective proceedings by holding joint hearings linked by telephone and more recently through tele-conferencing. This has worked well in several cases but it does present a problem where there are language differences or where the same words and phrases have different meanings to some legal cultures. Justice Zulman suggested that the deliberations should abide the completion of translation of the proceedings. However, it was pointed out that given current technology these concerns are susceptible of alleviation. For example, many courts now have simultaneous real time translation and transcripts to assist the proceedings. In the Second Circuit, appellate courts tele-conferencing has emerged as the high art form with parties participating before the court in several geographic

locations in real time face to face, where the pulse, temperature of the courts and the parties can be observed as they occur. Technology now exists to enable the courts to keep up and play a more efficient role in crisis management. Gerold Herrmann reminded us yesterday that we now exist in a global village. Given the international identities and operations of the no longer a typical Neptune/Juno Group, maximizing the value of the insolvent group businesses and assets for all stake holders, wherever located in the world, will be facilitated by co-ordinating the group activities on an international basis such that: -

- 1) the core businesses within the group can be restructured on a consistent global basis, and
- 2) the disparate business elements of the group can be dealt with in an organised fashion rather than piecemeal, perhaps by liquidation or by the sale or by other means, but a co-ordinated means. This can only be achieved through co-ordination and co-operation of the relevant foreign proceedings.

The work that UNCITRAL has done in promulgating the Model Law, which it has recommended for adoption to the countries of the world, has already had a significant effect shaping the form of many of the protocols that are now in effect, not withstanding the deliberative process of legislative enactment which as we know is always going to be relatively slow. The Bar and the Courts seem to have caught on and are invoking the process and the principles of the Model Law. Furthermore, as I understand from the report of Judge Akira Kitazawa, that the prospective changes to the Japanese domestic insolvency law, including a new reorganization law called "Business Development Proceedings" take into account many of the provisions of the Model Law including access and recognition, consequences of recognition, concurrent proceedings and equality of distribution. So it does appear that more and more jurisdictions and insolvency regimes are turning to the same page!

The Hon. Mr. Justice Farley

This Judicial Colloquium is a learning experience for us all. It is a sharing of views and a discussion of various approaches to provide our respective public, that's both domestic and international interested parties, with a more effective and efficient insolvency regime, which would lead to a greater predictability of result on a more timely basis. This will not only assist in negotiating self-resolution but also preserve and maximize value for the benefit of all concerned. Our legal systems have developed in relative isolation; they have been built up on a jurisdictional basis in a time when there was not so much international trade. On the occasion when there was attendant litigation, it could be dealt with on a more relaxed basis. But now with globalisation, you cannot deal with insolvency litigation involving increased cross-border interests with today's pace and complexity on the historical timing basis. It is real time litigation as opposed to autopsy litigation. If it is not effectively dealt with on a timely basis, value evaporates and then there is no justice. This demonstrates the old saying: "Justice delayed is justice denied."

Through the colloquium we have all gained an appreciation for the difficulties involved in the systems of our colleagues. I would emphasise the positive exercise of searching for solutions which was usefully brought out by reviewing the hypothetical. It was also noteworthy that along with the difficulties which some of our colleagues had with some elements, there was also a look of relief when asked if the Model Law

would solve that specific problem. The answer invariably was: “Yes, it would.” So there should be an emphasis when we return to our respective jurisdictions to request our legislatures to enact the Model Law. But I do not think that we can stop just at that because, as Judge Lifland has pointed out, it will take some time before the Model Law is enacted in our own jurisdictions and perhaps in the jurisdiction of the other parties who will be involved in insolvency proceedings before us. Therefore we cannot abandon the innovative functional ways that have been developed over the past decade to deal with these matters, such as the Concordat of the International Bar Association and also by using the Model Law as a “prototype” to develop tailored protocols. We need to take the message back to our colleagues because they did not have the good fortune of coming to Munich. They need to share our experience, even if remotely and indirectly.

There was recognition here that many of what I call “mechanical difficulties” would be eliminated, minimised or possibly deferred to a more appropriate time, during the immediate instability period if the UNCITRAL Model Law were in place. There was an appreciation that judges worldwide do not deal with a case unless the case is properly brought before the judge. Then the judge will deal with the matter as effectively as that judge’s domestic law permits; nothing which has been explored here should be taken as suggesting that a judge go contrary to that judge’s own law. What we are looking at are functional ways to deal with the real-time litigation that insolvency brings, using some innovations to get over those humps and hurdles on a timely basis. Because if we are delayed in dealing with the matter for months as opposed to a matter of days then we will have the value of the enterprise that is insolvent rapidly eroding either in a reorganisation or in a liquidation. We recognize that judicial co-operation (including communication and joint hearings) which does not involve the judge in doing anything that that judge’s jurisdiction will not permit is vitally important. We need to explore the ways of co-ordination to minimize delays and misunderstandings which will arise if the cases are dealt with completely in solitude, in essence ignoring the foreign element. The proposals which were examined with respect to the protocols involving joint hearings, with respect to the need for translation, with respect to the need for an understanding of the different terms and concepts in the other jurisdictions are perhaps complex. They are all awkward; they are all time consuming; they may involve some additional cost. But when compared with the alternative of dealing with cross-border matters in a traditional way of dealing solely with the matters on a domestic basis, ignoring what is happening in the foreign jurisdiction and then waiting until the foreign jurisdiction makes a decision, such co-ordination promotes appropriate efficiency. Otherwise dealing with the matter locally several weeks after that decision has been made in the foreign court and going back and forth like a ping pong game means that the value in question is destroyed.

As to the concept of communication, allow me to read to you from the report of the 1997 Judicial Colloquium. It was said that in some countries, for example my own Canada or in a number of the European communities, “it is difficult to imagine a corporate insolvency which would not involve some cross-border ramifications. How do the courts in international matters conduct themselves to maximize value for the interested parties. We must avoid becoming bogged down in non-productive diversions destructive of value of the enterprise. Of course we in the judiciary must recognize the sovereignty of each countries insolvency regime. However there are

significant commonalities upon which to build. There are significant advantages for parties concerned plus the advancement of general national economic interest through job preservation and maintenance of natural production and distribution chains. Co-operation amongst the courts means that matters can be dealt with efficiently and effectively. In an ideal world we would have the benefit of natural law. Justice would prevail smoothly and with due dispatch. In the real world however certain players may attempt to hijack the process. In a purely domestic matter we would not allow participants in a lawsuit on one side or the other to hijack the process. In international matters we should not allow anything similar. Of course in international cases the task is made more difficult because of having to co-ordinate matters on both sides of the borders of two countries, or more sides if more countries are involved. In international matters there is even more opportunity for the process to become derailed either: -

- 1) through the process of the players de-railing the matter by their being miscommunication or disinformation by the players or the representatives; or
- 2) a misunderstanding by the courts of where each is headed keeping in mind there are different legal regimes the question of first languages and concepts and term differences.

What is the governing basis then for any communication? I think that this is encapsulated by stating that this judicial co-operation and communication will be achieved within the substantive and procedural laws of each country with the result that an objective observer will be satisfied that in the circumstances the parties were fairly and reasonably dealt with and that the integrity of all the courts are maintained. That would include giving all those that were affected the opportunity to be heard and have their views judicially considered before a decision is made”

Allow me to comment on substantive matter communication. As I discussed yesterday, Judge Peter Walsh of the Delaware Bankruptcy Court and I from the Ontario Court are dealing with a multi-billion dollar insolvency matter involving the Loewen Funeral Homes Group. A draft protocol which had been agreed to by all the interested parties was presented to me for approval. It involved the parties having agreed to Judge Walsh and myself having private communications with respect to substantive matters. I must say, adventuresome though I am, I backed away from it. I thought that that was too risky, even though the parties had agreed. Just because a protocol has been advanced to you for approval, as described yesterday you may not agree with all the points. I did not agree with “private” communication on substantive matters and I asked for that portion to be revised, as it was. My view is that perhaps the better counsel is to deal with procedural matters and leave substantive matters to be dealt with in open court. But also it may be the better to walk before you run. So perhaps the next protocol or the protocol after that, if we can build on an experience perhaps that, will be the time to look at judicial communication on substantive matters.

Protocols are an effective tool for minimizing procedural difficulties. There must of course be an appreciation that there is a need to effectively communicate. In that respect the languages and laws of each of the jurisdictions are of equal value. Translation and an understanding of each other’s concepts and terms are absolutely fundamentally important. There should be no precondition, or even impression, that any one feel the need to communicate with the other person using a language or terms

with which that judge is not comfortable familiar. There must of course be a sensitivity of the views of the other regime. For example, we have the US recognition of “the debtor in possession” which is not shared by a large number of other jurisdictions, so it may be more appropriate for the US Bankruptcy Courts to appoint as officers of the court a neutral objective party to go into the foreign court. Of course functionality should always prevail over the exercise of academic wrangling. The question really boils down to: to whom does the foreign court’s have confidence in ultimately giving control over the assets located in the foreign court jurisdiction? Legal views should be the servants of business solutions.

In dealing with a reorganization I think that it is helpful to attempt to maximize value. However this approach must be tempered of course with the question of fair play to those parties who may be affected: are the creditors being dealt with in a fair way? With respect to dealing with group enterprises, as pointed out by Lord Millett, one must always recognize that you can only deal with the enterprise within your jurisdiction: you cannot deal directly with the enterprises outside your jurisdiction. There is as well the necessity of being alert to the possibility and the practical implications of conflict between various members of a group and those put in charge of administering them in the insolvency process. This is particularly so if there are financial dealings between members of the group which may be open to attack.

The European Convention on Cross-Border Insolvency Panel highlighted the desirability of guidelines for interpretation. But it must be recognized that the state of agreement thus achieved may only have been possible because the participants were able to agree on vague language with the view that the language would be interpreted by the courts later on. I would therefore suggest to you, with respect to the European regulation or with respect to the Model Law or anything that we are involved in on an initial basis, that we adopt a cautious considered view of matters because your decision will have impact for the future cases that come along.

With respect to the South-East Asia Panel, I must say that there were many points that were raised that rang familiar with experience in Canada. I do not think that we should regard these matters as unique. Human beings have commonalities around the world. There is political patronage in the appointment of the judiciary in many countries. That is not considered to be a fundamentally bad problem, so long as the most highly qualified people are appointed. One would hope that the political affiliation or support would be a minor element in judicial selection, if it exists, and that it would not preclude the appointment of qualified candidates who may have been associated to some degree with the present opposition parties or those who may be seen as apolitical. There is cronyism. After all it is normal for people to deal with those people that they know, know and trust or know they should not trust. It should be a tool of information, not of illogical blindness. There is a stigma to bankruptcy which prevails in Canada but to a lesser degree with respect to personal bankruptcy now than previously. The major emphasis should be on credit handling training with a view to avoiding further financial difficulties. We all share common problems.

So I believe that we have learned from this colloquium. Take back this knowledge to your colleagues. Build upon it, because the world is becoming smaller and more integrated. What you do in your country will affect what happens in my country and vice versa.

Hon. Mr. Justice Adolfo Rouillon

My evaluation will consist of a number of reflections, impressions and conclusions on the subjects we have been dealing with and from the point of view of a Latin American judge, a judge from a Civil Law country with a long insolvency legal tradition, a country that usually had and still has a significant number of insolvency cases. I also think that with some precautions my reflections and conclusions could be extended to many Civil Law jurisdictions.

Argentina's and Latin America's International Private law rules for cross-border insolvencies are old fashioned and out of date for a globalized economy. They are even inadequate to solve cross-border insolvency problems that are arising between the countries of the southern Cone of America, which are parties to the Mercosur agreement. It is true that Argentina signed the Montevideo Treaties of 1889 and 1940 both interesting international conventions with the purpose of unifying some rules of conflicts of law in bankruptcy cases. But Chile and Brazil – the main commercial partners of Argentina in South America – never ratified those treaties and it is almost sure that they will never do it in the future. So with the exception of some small countries which are parties to the Montevideo Treaties, most of the main Latin American countries are dealing with cross-border insolvency cases with national rules, designed mainly in the Nineteenth Century, which are completely inadequate for these times and for the years to come.

With this legal framework and despite the goodwill of our judges to create an atmosphere of international collaboration and co-operation with their foreign colleagues in insolvency cases, we have to recognize that we experience a sense of legal emptiness. Once again I want to remark that Civil Law judges almost always need enacted laws to proceed. Implicit judicial powers, were recognized, are limited and it is neither popular nor traditional for Civil Law judges to use non-statutory powers. The doctrine of comity is unknown to us. Insolvency Protocols are concepts somewhat exotic to us. We are subject to more formal procedures such as exequatur and reciprocity of foreign judgements and in most Latin American countries when there are statutory provisions on these matters, they hardly provide effective and efficient solutions to cross-border insolvency cases.

So considering that a case such as the Hypothetical is mainly a business problem, with the complexity and urgencies of business problems, especially the need of maximization of values and the importance of fast and timely action. I have to conclude that with our current legal grounds we are not provided with enough to deal with these kind of problems. That is why I seriously consider advantageous to enact the Model Law. Even more I think that the Hypothetical has demonstrated how urgently we need the UNCITRAL Model Law.

As regards communication between judges of different countries, different languages and or different legal cultures, my evaluation is that with the legal support encouraging co-operation between judges the national differences can be solved. The more we understand that we have similar problems and similar objectives the best we will try to overcome our different means to approach those problems, including languages, cultural barriers and so forth.

In this aspect I would like to stress the importance of the trust and confidence among insolvency judges of different parts of the world. To build this relationship is not easy; it takes a lot of time and effort but it is worth it to perform this as a priority task. This colloquium is an important step in the right way. Perhaps we should consider to move forward to establish a permanent forum of discussion, a stable place, a virtual place maybe, where we and any other insolvency judge from all over the world could resort to obtain international information about laws and precedents and also about our colleagues.

When I heard the discussion about the interpretation of some provisions of the European Union Convention, I recalled that during the last two or three years I have been considering the advantages and disadvantages of different approaches to modernise Argentina's International Private Law for cross-border insolvency. I would like to share my thoughts with you not because I think they might be universally valid but perhaps they can be useful to other countries.

The first approach would be the modernisation of our internal rules following some advice from local academics and professors. This option has the advantage of being comfortable, well known and easy to adopt by the legislative authorities. But in my opinion this will be a cosmetic reform, highly inefficient due to its isolation in a globalized world.

The second approach, which is being studied by some people in Argentina, is to design a sort of international agreement on insolvency amongst the Mercosur countries, something like a South American version of the European Union Convention. Although this would be a better option it has many disadvantages as well, for example, the enormous amount of effort especially to convince some of our neighbours compared with the limited scope of the rules of this treaty. In addition, nobody can guarantee that a significant number of South American countries would ratify this treaty. I would like to point out that the first Montevideo Treaty has been in existence for one hundred and ten years and was never ratified by Brazil and Chile. That is why I consider favourably the adoption of the UNCITRAL Model Law. First, because the work is already done and well done indeed. Second, its scope is not limited to this or that country, member or not of an international agreement. On the contrary, if my country adopts the Model Law it will be formally demonstrating to the whole world that we are in favour of judicial co-operation, equal treatment of local and foreign creditors, recognition of foreign representatives. In brief, that we have created a friendly environment to foreign investors in times when we need foreign investment and we are receiving huge amounts of it after the privatisation of almost all the former state owned enterprises. The predictability arising from the adoption of the Model Law will certainly result in the diminishing of the country risk ratio and this is a very important and general benefit in addition and beyond the immediate objectives of the Model Law.

Argentina has a new bankruptcy law in force since 1995 but the modernisation of its International Private Law rules for cross-border insolvency is still to be performed. In 1997 and 1999 I suggested that the Argentine legislators consider the advantages of the UNCITRAL Model Law. Unfortunately this consideration is delayed because in 1997 we had a legislative election and in 1999 once again we will have a Presidential

and legislative election. However, I would like to remark that I received a letter from the President of the Commission of the legislative Affairs of the National House of Deputies saying that he was interested in the subject and that after the election, provided that he is elected by the people, he will ask me for more details in order to raise this matter to the rest of Congress. So perhaps in the near future we can expect further news from Argentina.

My last reflection is how useful and exciting it has been to discuss these matters through the Hypothetical.

Chief Judge Tina L. Brozman

There has been the suggestions that the Model Law is not as necessary for some of the common law countries who have taken a leading role in dealing with cross-border insolvency. Whereas there is certainly a great deal of truth to that statement I think that there is a counter balancing reason, in fact two reasons that I can think of, as to why the Model Law is equally important for enactment in those common law countries as well.

The first is because it is very important for those countries to demonstrate continuing leadership in this area in order to build up what we call the snow ball effect – the more countries that show a willingness to enact the Model Law, the more countries around the world that will adopt it. That is a very important consideration.

Secondly and just as important for the common law countries with the Model Law are the provisions towards its end, which deal with concurrent proceedings and co-operation between courts and co-ordination of multiple proceedings. All of us in the common law jurisdictions while we deal with these issues do so with our fingers crossed hoping that what we are doing if challenged on appeal will stand up. None of us are absolutely certain that that result will obtain and with enactment of the Model Law that will lend a great deal of stability to the procedure that is currently being utilised and eliminate that possibility or fear that what the courts are doing is somehow subject to attack. So I think that for those reasons the Model Law is just as important in the common law countries as it is in the civil law ones.