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EVALUATION SESSION

Evaluation carried out by:
Chairman:
The Right Hon. Lord Hoffmann (UK)
Panel:
The Hon. Mr. Justice James M. Farley (Canada)
The Hon. Burton R. Lifland (USA)
The Hon. Jean-Luc Vallens (France)
Justice D. P. Wadhwa (India)

Lord Hoffmann
The object of this evaluation is for each of us here on the platform to try to distil from what emerged in yesterday's discussion something which will be of value to UNCITRAL in its efforts to promote an international bankruptcy convention.

Gerold Herrmann said in his opening remarks that he wished to proceed on two tracks – judicial co-operation and a convention for access and recognition and a possible third track, a model code, was realistically postponed to a later date.

During the morning, we had several case studies of judicial co-operation, more or less, in very large cases. What struck me listening to them was how little those stories aded to the perception which Mr. Justice Houlden shared with us in his opening remarks, namely, that he had invariably found judges in foreign courts friendly, co-

operative and wishing to help. How are they could actually help was a matter that depended upon their own legal systems.

So plainly, judicial co-operation on an ad hoc basis such as we were discussing yesterday is a very hit or miss affair depending whether the parties have a sufficient interest in a common solution and sufficiently sensible advisors. The protocols and schemes which have been produced in those cases have been on of the tailor-made solutions in cases in which there have been enormous sums at stake.

Judge Baxter yesterday made the practical suggestion that we might examine these protocols and see if they disclosed some common principal which might be of use in the general run of cases.

There was some talk about whether it was proper for judges to speak to each other, on which differing views were expressed. But I think that, for the reasons which emerged during our discussion of the circumstances in which we might wish to speak to each other, it is a matter of somewhat marginal importance. It became clear that the scope for ad hoc judicial co-operation depended very much on the extent to which the local law gave the judge freedom of action and that in many civil law countries, such freedom of action was often quite insufficient. Some form of new statutory provision was going to be necessary.

I think that Gerold Herrmann was, therefore, right and it is curious how most of the most important and sensible things in this Colloquium seem to have been said in the first 10 minutes yesterday. He was right in his opening remarks when he said it was time to stop congratulating ourselves on the individual cases in which we had achieved co-operation with foreigners and to concentrate instead not on the bespoke tailor-made end of the market but, on designing some ready-made suit which the judge could take off the legislative peg. In other words, we need some degree of certainty and predictability which can only come form a basic convention on access and recognition.

Now here we can start from an extremely lucid Expert's Report which sets out many of the options and which I shall not attempt in any way to recapitulate. I wish only to mention, in addition, certain points which happen to strike me as being particularly helpful.

Firstly, I think that Jay Westbrook and others were obviously right in saying that we should confine ourselves to the bankruptcy of economic enterprises and not bother with personal bankruptcies. The latter raises all sorts of awkward problems, and I should imagine is of no particular interest to UNCITRAL.

Secondly, although the very minimum content of such a statute must be to recognize the *locus standi* of the foreign administrator to appear before the domestic court. This shall not be a great deal of use unless the statute entitles the Courts to give the foreign administrator some form of relief.

Thirdly, that the very minimum relief which a Court should be able to grant under such a convention is a form of temporary restraint to preserve the local assets from dismemberment by creditors and the local business from destruction while the parties

and the Court consider what would be the most sensible thing to do next. It is hard to see how it would be contrary to the national interests of any country to accord to its Court this minimum power to intervene at the request of a foreign administrator.

Fourthly, I was attracted by the idea of allying countries to elect for different degrees of co-operation, what I think Manfred Balz described at Vienna as a cafeteria from which options could be selected. And also, to distinguish, as the English and the Australian legislation does, between those countries entitled to mandatory assistance and to those countries to which assistance is to be accorded on a discretionary basis. That I would regard – that menu so to speak – I would regard as being a relatively modest proposal which can be commended to UNCITRAL to pursue as a result of this Colloquium.

Mr. Justice Farley
Good morning. The situation of insolvency is generally distilled down into the concept of a lack of money. Carrying along on that situation, usually no matter in reflection how obvious the insolvency was, it is not going to be terribly obvious to all of the participants in the situation. For some, if not most of the participants in an insolvency situation, it is going to come as an unexpected situation. And, therefore, there is not very much, what shall I say, life boat drills beforehand. It becomes a scramble for the life boats and with that you have not only a lack of money but you have time and uncertainty eating up what money is left. It should not be a situation where we in an international situation add to those problems but rather attempt to provide some form of life boat drill. We have not lacked for ideas by the discussion over the past day. What I think we now have to take a look at is how, in fact, we implement those ideas.

Let me take you back to the situation of the fax industry. The fax technology is, of course, a very old technology. It is nothing more than a refinement of the photowire service that dates back about 100 years. It was refined and, in Toronto, the first initiative for fax transmissions occurred 30 years ago. It failed miserably. Why did it fail? Not because of the technology, but because there were no subscribers. And what we need are subscribers. Take a look at fax use now and observe that it is becoming obsolete with the electronic devices. How do we get people to sign on? I think that the UNCITRAL initiative is going to be extremely helpful but if we rely upon these types of Colloquiums, which only happen on an annual or bi-annual basis and the UNCITRAL mission, I am afraid we will not have anything within a reasonable period of time that we can point to as an achievement.

We need, I think, to continuously indicate in any writings, be they papers of be they decisions, articles by the academics, by the Bar, by the Bench, by insolvency practitioners and by the users to endorse the concepts that will be forthcoming as principles.

I think it is very helpful for us to remember that when Evan Flaschen, for instance, was talking yesterday, and as Lord Hoffmann was saying just now, we have to look at the great number of cases that do not hit the headlines. I refer to the very local experience here in Canada. We have a very open economy. It has always been very open but since NAFTA the amount of trade with the United States has not really become international trade. It has become domestic trade. Since 1988, with the

initiative of NAFTA and the reorganization in Canada of our industry, which was somewhat masked by the recession, the amount of "real" increase in trade has been 40% in real terms, 60% in money terms (in current dollars).

We have to recognize that there will be an enormous number of cases with international implications and they will not have the benefit of experienced counsel or practitioners. These may be quite local and we have to, I think, give them some reference point. Now, I think it is necessary to do that because no matter in a case that comes across the judge's desk (that is assigned to him) if the indication from the judge in the other country comes across as merely that judge's fresh initiative, it may not be warmly received. If it is indicated that that initiative or offer, or proposition by the judge in the other jurisdiction is adhering to the principles which we were discussing over the past day, it may fall on much more fertile ground. I think that yesterday there was probably a very good point made when we talked about the difficulty of understanding the other person's side.

I think that when you appreciate how difficult sometimes it is to make a judicial decision within the concept of a purely domestic case where you have in an insolvency situation multiple parties getting involved and staking out their particular claims. Under your own system with which you are familiar, you will perhaps appreciate that when you are trying to co-ordinate that with another system of law where the concepts may be quite different, even though the language may be the language with which you are familiar, I think that it is a matter in which you are going to have to indicate to counsel that you need assistance of counsel in your country, and in the country on the other side of the border, plus the assistance of the judge on the other side and try to have that co-ordination.

I think it is also perhaps a mistake to regard as we do here in Canada outside the province of Quebec where we are primarily English speaking we become very lazy. We assume that everyone in the world speaks Canadian English. They may speak English; they may speak English better than we do but it is not Canadian English, and it is not Canadian legal English.

I think that in any insolvency case it is helpful, and maybe particularly helpful in an international insolvency situation, at the start of the case for the judge to give a statement of expectations so that you provide the model that you anticipate will be followed. You can leave it rather general but I think that it will set the standard for the type of communication and submissions that you receive in that respect.

I think as well there was discussion yesterday about the desirability of the appointment of a neutral third party to facilitate matters. There was concern that the introduction of yet another party in the process may crowd the table. But I do think that because so much of bankruptcy insolvency litigation is resolved not in the Court but outside the Court that the introduction of a neutral third party can be of great assistance, particularly when that neutral is given general instructions as to what to achieve possibly not specifying how it is to be achieved but to leave that flexibility to the neutral. I find that sometimes neutrals can come up with things. They say, "Of course the judge would like to have this done", where the judge himself, or herself, would never dare say that. I leave that as a suggestion to you. And lastly, I would say it is always helpful to remember in the judiciary, and I think with respect to my

civilian colleagues who feel constrained because of the lack of enabling legislation, perhaps if they examined their ability to control the process somewhat by scheduling, you will find that you will give parties enough time to reflect on how to resolve their matters outside of Court rather than inside where sometimes what happens is truly people go for broke.

Thank you very much.

Judge Burton Lifland
My distillation or evaluation is a mix of generalities and specifics, which given the amount of time allotted is sort of compressed and I will try to cover as much as I can before I get the signal from our leaders. So, bear with me in that regard.

My approach to this meeting, or conference, or colloquium, is from the perspective of an American judge coming from a court that enjoys or has a fairly steady stream of transnational or cross-border insolvency proceedings. Each member of our Court has been overly occupied by such cases, and occupied as we speak, and is well aware of the usefulness and need for a uniform process that can impose some international discipline that preserves value, provides predictability of outcome, avoids early destabilizing litigation and which provides for movement toward an accommodation of the disparate economic and national interests that may be involved in a given case. Parenthetically, this desideratum for a process that sets the stage for harmonizing foreign proceedings does not come from an exposure to notorious cases such as Maxwell, Olympia & York, OR BCCI, but from our exposure to the type of cases that we identified yesterday as "normal". That is, those cases which are cross-border but whose insolvency does not threaten some major segment of the economy.

I agree with the observations yesterday that notorious mega cases beget easier to achieve results through co-operative protocols. This is so because the enormous sums and forces at play give no choice for the parties but to play out their self-interests through a co-operative protocol. However, it is, and will in the future, be the "normal" case measured in millions rather than billions that will present the gist for a co-operative oriented process.

It is well recognized that the application of the principal of comity does not work universally and that with the exception of the few provisions authorizing ancillary proceedings, or otherwise statutorily recognizing the primacy of a foreign proceeding or jurisdiction, business failures implicating the laws of more than one nation are not governed by predictable and settled means. Because of the heightened awareness that investors, credit grantors, and indeed debtors, now more than ever require uniform insolvency protection, the timing appears right to attempt, with UNCITRAL's backing, to obtain a uniform solution or regime with access and recognition as a centrepiece of model legislation.

This gathering consisting of judges of diverse jurisdictions, who are the ones charged with administration of the insolvency regimes of their respective countries, or our respective countries, constitutes a strong and well-positioned group capable of encouraging local uniform legislation of the type debated at yesterday's meeting. From the comments made, there seems to be a strong consensus and general support in that direction. Indeed, the draft Committee Report, which is an excellently crafted

document, admirably fulfils its stated goal of locating common grounds among nations to support the establishment of a threshold system for access and recognition. The draft Report is an excellent working document. Its principal virtue, or virtues, are that it is realistic as to what can be achieved for now and that it is not overly ambitious in scope.

I know from experience in Ancillary 304, and other cross-border cases and as you have heard from some of the case studies yesterday, the inception of cross-border filings is often marked by a precipitous rush to gain leverage and advantage. Grab rule tactics and courthouse rushing are common as is early polarization among the contenders for assets and control. Forum shopping and non-deliberative attempts to establish one form over the other as the dominate or primary form is often the norm. It is because of the need to quell this early frenzy that one wishes that a version of an automatic stay calculated to forestall the headlong rush into fractious litigation were available. A standstill or freeze period justified by the needs of the situation presented that involves the principal players, foreign and domestic, provides the opportunity for evaluating what can be done to preserve values, determine efficacy of a break-up rescue rehabilitation. The enterprise can work out emergency protocols for those taking part in concerns over the enterprise and would be able in this period to attempt to work out the protocols of the nature that we discussed yesterday. It is often during a cease-fire that the parties in confrontation get the opportunity to collectively see what could be done to find answers to the problems presented.

Often, with Court assistance, the parties can be aided by a third party neutral, an appointee, in the nature of a facilitator who can act as an honest broker with credibility and credentials that command the respect of the parties and the respect of the courts. In appropriate circumstances, key issues can be mediated or operating protocols established so that some form of triage can be accomplished. The concept of access and recognition presents the ability of courts to entertain or reject the notion of standstill.

Evan Flaschen described briefly yesterday a case he is involved in currently which presents a great many of the problems dissected by the Committee, and illustrated by the case studies of yesterday. I happen to be currently presiding over that particular case, so I can tell you that it has all of the juicy features of difficult cross-border cases in the category of “normal”.

The debtor is a very entrepreneurial individual [Professor Westbrook and Lord Hoffmann] with worldwide assets that are amenable to seek [restoration] wherever located. There is a foreign government liquidator, non-private I might add, who is a main player. There is a grab of local assets, a reorganization proceeding in the United States, two involuntary bankruptcy proceedings or threats of proceedings in the foreign jurisdiction, a foreign judgment proceeding in the foreign jurisdiction for very substantial sums and a United States attachment proceeding. I might add that the other jurisdiction is a civil law jurisdiction with all of the problems that we have learned are inherent in gaining access and recognition. The debtor controls many enterprises which could be placed in jeopardy implicating large bank creditors with contingent clients.

The foreign liquidator and the debtor are well armed with competent, capable and talented and very expensive litigators. They are in battle on several fronts and the stay, which in this case is automatic because of the Chapter 11 filing, could just as easily come about through application made under an access and recognition regime, if one were in place. Most importantly, the concept of the civil law problem was addressed through (incidentally this civil law nation requires a very formalistic approach to gain recognition and find the means for getting an open file). This proceeding is now marked by an attempt of our Court, this Court, to gain access, or to provide the means for access and recognition, through the process of (sounds like) *leges rogatory* but the *leges rogatory* are built upon the mandate or order that I issued in the case when I felt the need of the imposition of a third party neutral. It might be profitable if I were to quote from sections of that Order because it deals with many of the things that we have been debating today.

> "Upon due deliberation and it appearing that the appointment of an examiner with special credentials, experience and background in the field of cross-border insolvency, is in the best interest of the estate and its creditors…
> The United States Trustee is directed to appoint an Examiner (in this case it was Dick Gitlin) in order to attempt to develop a protocol for harmonizing and co-ordinating proceedings pending before the Courts of the United States and the foreign state (which shall be unnamed) . The Examiner in addition to the above described general mandate shall also…"

And there are a shopping list of what the mandates are which include

> "…the direction to canvass, determine and identify the issues and impediments which must be resolved to facilitate reorganization, determine whether the negotiations as to any such issues could, within a reasonable period of time, result in a proposal of a plan of reorganization …inquire of the principal parties and interest to the related proceedings as to their respective positions as to the resolution of any issues and impediments…"

and on and on

> "…..to hold meetings with the principal parties and interest in the related proceedings and as appropriate, obtain form such parties in writing a description of their respective positions…"

and most important,

> "…to mediate any differences in respect of the positions of the various parties and interests vis-à-vis any issues and impediments identified and the proposal of a plan of reorganization."

And lastly in importance (there are other features),

> "….to act as a facilitator in respect of all of the foregoing matters."

The letters to the foreign court contained the following plea from my Court. It is in paragraph O of the letters and I quote:

> "I personally, as well as other judges of this Court and of other Courts in the United States, have had substantial experience with cross-border insolvency matters and it is the opinion of this Court, and the view of such other Courts generally, that in the interest of international co-operation, judicial economy, maximization of value and other proper interests, the Courts and parties involved in cross-border insolvency matters should seek to find avenues for mutual co-operation and co-ordination with respect to judicial actions in different countries involving the same debtor and its assets."

That process met in the foreign jurisdiction with, I cannot say success, but a sympathetic approach that seems to be permitting them to bend their rules and procedures to accommodate access. There is no way at this time to evaluate the ultimate result. Whatever does occur, however, will be benefited by a more efficient process. Incidentally, as a result of this, the parties have already, pending the process of access and recognition, commenced mediation. It may not succeed but certainly a more efficient approach and deliberate approach is now extant.

In partial comment to the remark of Professor Westbrook, and agreed to by Lord Hoffmann, while I do see the basis for the position that any moral cross-border statute should eliminate from its coverage an individual debtor, I do not believe that that is a realistic approach given the experience had with cross-border, asset-laden entrepreneurial individuals engaged in substantial business activities. A carve-out based purely on an individual entity, a personal entity, would create a major jurisdictional gap in the uniform system. I have seen time and time again that it is the nature of many individuals not to form corporations or other business entities but to conduct their affairs on a personal basis or involve themselves in control of substantial assets. I think it would be counterproductive to not find a way to allow those individuals access under a uniform system in foreign insolvency proceedings.

In conclusion as I see it, yesterday's discussion demonstrates that there are more common features than divergent ones in a great number of the world's insolvency systems and proceedings and that this is true in both the civil and common law countries. This Colloquium demonstrates that the basis for multilateral agreement already exists.

Thank you.

The Honorable Jean-Luc Vallens
I shall speak in English, in spite of my accent and in spite of the translation, so that you will not be obliged to wear this little apparatus this morning.

First, thank you to INSOL for this meeting. It was exceptional for judges to meet and to talk together about the matter of insolvency. First of all, I would like to rectify a little mistake in the Report. Not in the Report but in the Annexures of the Committee's Report. If you have this document, The Annexures, please look at page

28. You will see in the last two paragraphs that it is written that the assets in France (I speak about the law in France) will be restricted to French creditors. No, we must read in fact as for French law, the assets will be restricted to the creditors whose claim is admitted in French proceedings and not restricted to the French creditors.

Now some words about yesterday. We heard a very typical illustration of some cases involving two or more countries concerned by cross-border insolvency. Yesterday, I was dreaming when hearing about all that it is possible to do only by talks, agreements without rules or limits given by laws, but it is not possible anywhere. Mediation is not provided by any law. I think we must refuse and deny the choice between law and trade as I heard yesterday. Law is not against trade but, as judges, we must follow rules to give security to trade. In fact, if we have to choose between law and trade, between the right decision allowed in law and the right decision not legal but according to economic criteria, we must choose the first one. That is a problem for us. These rules can be let down by national laws of entreaties. It does not matter in fact but they are the basis on which we can develop co-operation between judges or between administrators or liquidators. No co-operation before good laws or good treaties because I think we need rules again to give security to creditors too. If we meet difficulties with cross-border insolvencies, it looks to me that it would be because of three factors at least.

Firstly, the will of each country to organize a survey and the control of assets localized in its own territory and, moreover, to protect its own creditors, chiefly, its secured and public creditors.

Secondly, the will of the creditors themselves to get payment of their claims without taking into consideration borders or by using protection given by these borders.

Thirdly, the will of the debtor to use his assets abroad and go on with his commercial activities.

These three wills are as we know opposite. That is why it is so difficult to draw to a convention those from 15 different European countries. In spite of these issues, it is possible for me to propose several criteria which are able to favour recognition of cross-border insolvency proceedings thanks to examples given yesterday. We must let our own common condition for all of us and first, a firm lead by a natural person or a legal person. In fact, it is possible to file bankruptcy for a natural person without any commercial activity in several countries but to get the minimum standards, it could be simpler, in my mind, to take into consideration the economic aim of the proceeding. I think it is the aim of INSOL also.

Secondly, the insolvent must really be unable to fill his liability for rather long periods. In fact, it is possible to take care of preventive proceedings and, in such proceedings in France, we accept arbitration of a third person. There are too many differences in such proceeding to recognize them easily anywhere.

Thirdly, the assets and the powers of the debtor must be under control of the court or of an administrator. I do not think it is possible to recognize anywhere the act or the powers of a debtor in possession under US law.

Fourth, creditors must be stopped in their individual law suits against the debtor during the proceedings or at least their right ought to be under a minimum of control also.

Fifth, the proceedings must be open or at least surveyed and controlled by a judicial court.

Sixth, a practitioner, administrator, trustee or liquidator must be appointed by your court or by creditors to manage and, if necessary, to sell assets for the interest of creditors or for the reorganization of the company. But who needs a practitioner?

Finally, for the purpose of international affects of the proceeding, it is necessary to certify a sufficient link between the proceeding itself and an asset localized.

From this, recognition can be made easy by following several simple ideas. The principal of recognition could be admitted to national civil or commercial law in every country. Maybe it is easier to amend a law than to draw up a convention. Germany gives a good example of that now. Recognition ought to be given by a simple procedure. Some rules would give legal protection for the interest of local creditors.

First, a better knowledge of local creditors by wide publication of the decision opening the proceedings, the right to bring an action against recognition of the foreign decision of the foreign court in the local court after this publication. And then a stay of the local former proceeding on request of the foreign liquidator. If this local proceeding can be considered as an Ancillary 1 to a stay of individual law pursuits and why the right to lodge claim for foreign creditors into any proceeding. If those rules are admitted, co-operation between judges and administrators will be almost natural. Of course, such rules will be laid down in the law or in a treaty. I do not think it is enough to use a Committee and to use the goodwill of judges and administrators all over the world. I do not think those ideas are enough to make a good uniform act or protocol on insolvency. At least they can make us more confident with foreign proceedings and foreign practitioners. It would be already useful.

Thank you.

Justice D. P. Wadhwa
Judge Brozman, Lord Hoffmann, members of the [?], Brother Judges, Members of the Bar, Ladies and Gentlemen.

I am grateful to the organizers for inviting me and giving me this opportunity to participate in the Multinational Judicial Colloquium of Cross-border Insolvency. I consider it a privilege to speak at such a colloquium. My notes, which I have prepared, appear to be a little disjointed but this is because of the posture of time and I hope you will excuse me that.

I will be briefly touching upon the spirit of law in our country, India, so that you are able to appreciate my point of view.

I heard with great interest the speakers from various countries showing their profound knowledge on the subject of cross-border insolvencies. The Expert Committee's Report on Cross-border Insolvency Access and Recognition is a [spot] document. I congratulate the Reporters in bringing out such a report. When I go back to my country, I will forward this Report with all the Annexures to the Government of India and to the Minister of Foreign Justice with a request to get it examined by the Law Commission of India and bring out a comprehensive law on insolvency with special reference cross-border insolvencies.

To my knowledge, in India, we have not so far any case of such magnitude having cross-border implications, except one in recent times and that was BCCI. In that case the Bombay High Court held that it had jurisdiction to wind-up the Bank, a foreign company, under the provisions of the *Company's Act* as an unregistered company since it had assets in India and had carried on business in India. The issue before the Court, however, was of certain monies from part of the general assets of the Bank. The Court did not deal with the question of cross-border insolvency as such as no question of this nature had arisen before it. Most of the reported cases in our country having a limit of foreign insolvency pertain to persons residing and carrying on business in British India and the former Indian princely states. These cases will not be of any relevance today. With the economy opening up and the era of decontrol, deregulation and liberalization having set in, it is not far when we will have to face the problem called before this Colloquium. It is wise to be ready and hence the relevancy of the Colloquium for us.

Our insolvency laws are old and, to my mind, cannot meet the challenges of the day. As a matter of fact, the law of insolvency in our country, like most of the laws, owes its origins to the English law. We have for historical reasons two Acts, namely, the present *Insolvency Act* of 1909 and the *Provincial Insolvency Act* of 1920. These are based on English law of the time. The Law Commission of India took up the revision of these laws of insolvency on a reference made to it by the Government. It gave it support in the year 1964 proposing a comprehensive insolvency legislation for the whole of India. But it appears that the Report called the 64th Report on Insolvency Laws was not accepted by the Government. In any case, considering the present state scenario, this Report would appear to be outdated. A somewhat significant amendment was made in the two Acts in the year 1978 and that was by introducing the concept of insolvency notice. These two Acts deal with insolvency of individuals or of partnership, which is a compendium of individual names.

Then we have procedures for winding up of a company incorporated under the *Companys' Act*. There is also the *Banking Regulation Act* of 1949 dealing in winding up of a banking company, including a banking company incorporated outside India. *The Sick Industries Company Special Provision Act* of 1985 deals with reconstruction and rehabilitation of a sick industrial company. As a result, the bank of India under the *Bank of India Act* and the *Foreign Exchange Regulation Act* is a regulatory party dealing with the repatriation of assets outside the country but those provisions are again not quite relevant to the subject we are discussing.

Ours is a Common Law country. We generally follow principles of private international law and recognize and enforce foreign judgments subject to certain defences that may be offered. We are also ports of equity and have also inherent

power to do justice and to pass orders for that purpose. In one of the cases, our Supreme Court considered the question of winding up a company incorporated outside India and served their foreign creditors good proof their claims in the winding up proceedings.

Yesterday, discussions had been extremely thought provoking. We heard different views from speakers from various countries which have been very well analyzed. Everyone of us realizes the need for judicial co-operation and access and recognition. A view was expressed that there should be more than mere recognition. To me, it appears that recognition would also mean and include enforceability. When we talk of initial co-operation, it is the respect one judge has for the orders of another judge in different jurisdiction and giving effect to that judgment in the spirit and principle of comity under the private international law.

There was a great deal of discussion on a judge communicating with another judge of a different jurisdiction. As usual, there are for and against such an approach. We in India follow Anglo Saxon jurisprudence, and it is foreign to us that a judge would talk to another judge either in person or in absence of either of the parties. A case has to be decided on the basis of the record before the judge and arguments addressed before the judge. Speaking as a judge myself in India, I am not supposed to talk to a judge sitting even in the adjoining courtroom on a case pending before me. I will talk and discuss the issue with a judge only if he is sharing the bench with me, although a third judge or a neutral judge could be appointed. I am really aghast at the idea but it certainly provoked events and was perhaps the idea because the judges are not arbitrators and I can not think of a judge as a court arbitrator.

We started the discussion yesterday with the basic philosophy of insolvency, the need to harmonize the proceeding in different jurisdictions, the primary and ancillary and subcilliary jurisdictions , the need for a convention and legislation based on that rule of the administrators in different jurisdictions for seizure for successful conclusion of cross-border insolvency proceedings, local priorities, foreign creditors systems prevailing in civil and common law jurisdictions, international insolvency practitioners in the changing world of business, reciprocity requiring the same level of sophistication, for example East European country and the Western world, complexity of bankruptcy law, its application to cross-border insolvency, unilateral registration and the like.

Without specifically referring to chapters in the Experts' Committee Report, may I say that, in my view, among the different approaches referred to perhaps suitable domestic legislation providing for a general reciprocity of judgments would be more acceptable. There is also need to harmonize the insolvency laws of each country to achieve the common objective. At least there should be some basic rules applicable in the cases of cross-border insolvency. There is no dispute in the present contest of globalization of business and trade that there should be some common approach to tackle cross-border insolvency cases. It is pertinent to mention that the legal structure of our country, and perhaps others as well, is tailored to meet only the domestic insolvency cases. In any case, unless some sort of mutual assistance schemes among the nations is chalked out, it will be difficult to achieve the goal. It will not be practically possible for the country to make provisions in its legal regime to solve cross-border insolvency cases in the absence of reciprocity from others.

To achieve this, perhaps one of the practical approaches would be to provide for mutual assistance in the matter recognized through multi-lateral agreements. The details of the extent of such mutual assistance in this regard may require study and concentration. Once such an agreement is executed by the nations as a follow up for disputing nations, depending on the existing legal framework, it may help to make implementation legislation for the purpose of enforcement of the terms of the agreement. In this context, it may be stated that the *Foreign Awards Recognition and Enforcement Act* of 1961 which deals with the enforcement of foreign awards in India was passed and this Act gives effect to the convention on the recognition enforcement of foreign arbitral awards done at the New York Convention on June 10, 1958 to which India was a party. Perhaps such a convention would be useful and based on that a legislation could be passed. This again requires great consideration especially taking into consideration the interest of the domestic claimants should not be made subordinate to claims of cross-border claimants. The provincial claim now prevailing under the statutes will have to be kept undistorted and if it is possible to give to cross-border claimants at the time of disposal of assets.

Before concluding, I wish to give my personal thanks to Mr. Herrmann, Mr. Adamson, Mr. Gitlin and Mr. Sahaydachny at whose invitation I have been able to come and attend this function.

My thanks are also due to Judge Brozman. Yesterday, she conducted the proceedings so admirably well. I hope some day she will be able to come to India on a lecture tour on the subject of bankruptcy. When she comes with her husband and children, I would like to remind her that “B” does not always stand for “Bankruptcy”, it is also for “Beautiful”, and that is India.

Thank you very much.