

INSOL International: Fifth Judicial Colloquium

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INSOL International, a professional association of over 7,500 members—and member organizations from many countries on every continent—continues to be a vigorous leader in cross-border bankruptcy cases and transnational insolvency. This is your NCBJ representative's report on Insol and its continuing programs, and the connection/participation of NCBJ and its members in INSOL activities.

There is a broad sweep of programs—educational, developmental and international in scope—which INSOL has undertaken and continues to pursue. Perhaps no private volunteer association of professionals in the world makes a greater contribution to advance professionalism and effective international bankruptcy systems than INSOL.

Illustrative of this is the recent INSOL-sponsored Fifth Multi-National Judicial Colloquium held September 20-21, 2003, which attracted bankruptcy judges from 35 countries. Judges from such disparate places and legal cultures as Japan, Latvia, Nigeria, New Zealand, Argentina, South Africa, Germany, Singapore and Canada attended.

With co-sponsors UNCITRAL and The World Bank, this meeting held closed door sessions for the judges to (a) get updates on numerous international commercial

and bankruptcy law programs, and (b) share candid views on various important topics/problems involving cross-border insolvency cases. Topics concerning the UNCITRAL Model Law, and development of its Legislative Guide, and the World Bank's extraordinary world-wide survey of bankruptcy systems were reported on. Issues of a practical and current nature such as "dueling jurisdictions", clashing legal cultures, and differing legal practices (civil vs. common law, etc.) were explored, and debated by the participants. And, of course, the issue and problems of cross-border judicial communication and cooperation were discussed at some length. With views on these difficult issues expressed by judges from such a wide-ranging spectrum of systems, there was no lack of interesting ideas and diverse points of view.

Several of the more significant initiatives which are now being undertaken by the United Nations, The World Bank, the International Monetary Fund, and others, were discussed. Adoption of the UNCITRAL Model Law, a watershed international law accomplishment was first on board. It has, now, been adopted by seven countries: [South Africa](#), Mexico, Japan, Serbia/Montenegro, Poland, Eritrea and Romania). The status of the law, adoption or partial incorporation into existing law, is now being considered in seven others (United States, United Kingdom, New Zealand, Australia, Argentina, Canada and Spain). The most controversial portion of such proposed cross-border statutes - provisions requiring *reciprocity* from other countries to be utilized by that country - was discussed at some length.

The ongoing World Bank program to identify and help developing countries craft an insolvency legal system—law, courts, and practices/procedures—was also reviewed. The Bank’s effort to develop a comprehensive and workable set of universal Principles and Guidelines for Effective Insolvency Systems was described and evaluated by the judges in attendance. Of singular and paramount interest in this regard was the unique survey conducted by the Bank of fifty different countries’ insolvency systems. Its results reveal much about the world’s insolvency systems, such as what their differences and similarities are, where the power lies, and who and/or where the process of

reorganization is best favored, or least successful. (More on that later.....in another report).

Panels also discussed and contrasted their systems on topics such as: The Role of Judges in Reorganizations with Denmark (being the most “hands-off), Canada and the U.S. (being the most hands-on; and ably represented by our very own Louise Adler; Building Judicial Capacity (Court systems to effectively implement insolvency regimes); European Insolvency Regulation; and, Judicial Communication and Cooperation.

This INSOL Judicial Colloquium was attended by NCBJ members Randolph Baxter, Louise Adler, Eileen Hollowell, Chuck Case, and myself. The colloquium was immediately followed by the annual INSOL conference and education program attended by approximately 400 professionals from about 50 different countries.

Following this INSOL program - and the productive participation of NCBJ members at the colloquium - INSOL will sponsor a panel at the NCBJ annual conference in October. That panel will work through a hypothetical insolvency case which involves the U.S., Mexico and Canada, and it will look at problems and problem solving from the practitioner’s point of view.

I would strongly urge the NCBJ to continue its working relationship and professional association with INSOL. As a notably effective and high profile contributor to international bankruptcy programs, educational seminars and workshops, and

judicial improvement and systems progress, our connection with INSOL is very much in our mutual best interests. It is a partnership worth keeping!

Respectfully submitted,

Sid Brooks