



ABILA Newsletter

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MESSAGE FROM THE PRESIDENT

This issue contains announcements of three conferences — an ILA regional meeting on cultural heritage issues at Willamette Law School from October 12-14; International Law Weekend, in New York, from October 26-28; and International Law Weekend — West, in Santa Clara, California, from February 2-3, 2007. I urge members to attend, and bring their friends. Among them, the conferences will present a series of discussions that engage a wide range of areas in international law.

The International Law Association's biennial conference took place in Toronto from June 4-8. Several American Branch members describe the work of their committees.

Finally, we note the life of Professor Louis Sohn, an Honorary Vice President of the Branch, who died on 7 June 2006. One of the most renowned and respected international law scholars, Professor Sohn was a friend and mentor to many of our members. Our past President, Al Rubin, has written a brief remembrance.

I look forward to seeing you at one or more (if we are both lucky) of the conferences below.

REPORTS ON THE TORONTO CONFERENCE

INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE COMMITTEE

By Christina Cerna

Martin Scheinin, the Chair of the Committee on International Human Rights Law and Practice was absent, consequently the co-rapporteur, Menno Kamminga, presented the interim report on the Committee's progress. The 2004 ILA Berlin Conference entrusted the Committee with the task of preparing a report on the relationship between general international law and international human rights law. The meeting of the Committee took place on June 6, 2006.

The Committee began its work on this theme at a workshop held in Maastricht from January 27-28, 2006, hosted by the Maastricht Centre for Human Rights. At the Maastricht workshop papers were presented on the following subjects: Martin Scheinin presented a paper entitled Human Rights Treaties and the Vienna Convention on the Law of Treaties—Conflicts or Harmony; Ineke Boerefijn presented a paper on Reservations to Human Rights Treaties; Robert McCorquodale presented a paper on State Responsibility and Human Rights; Ralph Wilde made a presentation on Human Rights Obligations versus Obligations under the UN Charter; Jonas Christoffersen on The Special Interpretation of International Human Rights Treaties; Menno Kamminga presented a paper on Human Rights Treaties and State Succession; Riccardo Pisillo Mazzeschi presented a paper entitled Recent Decision of the ICJ (*LaGrand, Avena*) and the IACtHR (Advisory Opinion OC-16/99): Some Reflections on their Impact on the General International Law of Human Rights; Mahulena Hofmann made an oral presentation on Human Rights Treaties as Directly Applicable Law focusing on the experience of states in Central and Eastern Europe; Christina Cerna, who could not attend the workshop, submitted a paper entitled The Right to Consular Access as a Human Right and Dinah Shelton, who is not a member of the Committee, submitted a paper entitled Are There Differentiations Among Human Rights? and Jus Cogens, Core Human Rights, Obligations Erga Omnes and Non-Derogability.

On the basis of its Maastricht workshop, the Committee presented eight preliminary findings related to the direction of its ongoing study and its programme of work towards the 2008 ILA Conference. The preliminary findings aimed to reconcile international human rights law with general international law and the findings urged a "reconciliation" approach over a "fragmentation" approach. There was some doubt expressed at the Committee meeting that its goal of working towards a succinct doctrinal statement on the relationship between general international law and international human rights law, to be proposed for adoption by the Association's General Conference in 2008, was feasible. In any case, it was agreed that the Committee's project will result in an edited volume of papers emanating from the project that

will be published in 2008 and that at the 2008 Conference this project would be terminated.

COMMITTEE ON COMPENSATION FOR VICTIMS OF WAR

By Luke T. Lee

The Committee, chaired by Dr. Luke T. Lee, with Professors Rainer Hofmann of Germany and Shuichi Furuya of Japan as Co-Rapporteurs, presented its Interim Report based on discussions at its workshop in Berlin, 2004, and intersessional meeting in Frankfurt, September, 2006. These discussions profited from and built upon specially commissioned papers by Professor Hofmann, Dr. Frank Riemann, D. Roland Bank, Elke Schwager, Dr. Dieter Fleck, Professor Furuya, and Professor James Nafziger, all of which had been circulated among Committee members for comments and are available on the ILA website. They aimed at facilitating the drafting of a Declaration of International Law Principles on Compensation for Victims of War, in the form of Articles and Commentaries, at the Brazil Conference in 2008. It is planned that the Declaration will be adopted by the ILA at its Hague Conference in 2010.

The Committee's meeting in Toronto was well attended by both its members and other ILA Members. Its Interim Report and recommendations were unanimously approved at the meeting. The proceedings of the meeting will be published in ILA, *Report of the Seventy-Second Conference: Toronto* (2006).

COMMITTEE ON CULTURAL HERITAGE LAW

By Professor James A. Nafziger

At the Toronto Conference the ILA adopted the Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material. The Principles culminated a multi-year project to encourage collaboration in avoiding and resolving disputes concerning cultural material, regardless of the private or public character of the parties involved. The ten Principles are designed to be used by international organizations, governments, museums and other institutions, galleries and other commercial enterprises, and collectors. The Principles provide, for example, a set of requirements for requests and responses involving the transfer of cultural material, alternatives to such transfers, the special situation of cultural material pertaining to indigenous peoples and cultural minorities, as well as provisions related to the treatment of human remains and the maintenance of registers of cultural material.

The ILA also approved of an agenda for the Committee that will include two new projects: a study of the relationship between international trade law and

cultural heritage law; and a study of the concept of safe havens for temporary deposit of cultural material rescued from circumstances of armed conflict and other serious threats.

On March 31, at the centennial annual meeting of the American Society of International Law, the American Branch co-sponsored a panel on the broad concept of international cultural law. The panelists used an historical backdrop to discuss issues of cultural heritage, cultural rights, the cultural defense in criminal trials, religion, and sports.

COMMITTEE ON LEGAL ISSUES OF THE OUTER CONTINENTAL SHELF

By Professor John E. Noyes

At the 2006 biennial meeting in Toronto, the ILA Committee on Legal Issues of the Outer Continental Shelf completed work on its analysis of the limits of the continental shelf beyond 200 nautical miles from the baselines of coastal states. The Committee's 2006 report and its 2004 Berlin report analyze Article 76 of the 1982 UN Convention of the Law of the Sea and issues facing the Commission on the Limits of the Continental Shelf. The Commission is the technical body established by the 1982 Convention to provide recommendations on continental shelf limits to coastal states on the basis of which coastal states may set final and binding limits. The Committee's report also addresses dispute settlement issues relating to continental shelf limits.

The Committee will next turn to an analysis of Article 82 of the 1982 Convention and the issue of the sharing of revenues derived from the exploitation of the continental shelf beyond 200 nautical miles. The Committee expects to conclude its work at the 2008 biennial ILA meeting in Brazil.

INTERNATIONAL MONETARY LAW COMMITTEE and THE INTERNATIONAL SECURITIES LAW COMMITTEE

By Professor Cynthia C. Lichtenstein

International Monetary Law Committee:

This Committee is presently chaired by William Blair, QC, and unlike most other ILA international committees it does not have a Rapporteur or Co-Rapporteurs. Instead, the Committee has two Vice-Chairmen, Thomas Baxter, presently Executive Vice-President and head of the Legal Department of New York Federal Reserve Bank and Antonio Sainz de Vicuna y Barroso, Head of the Legal Department of the European Central Bank. The Committee's Reports to

the Biennial ILA Conferences are prepared by various members of the Committee and woven into a single Report by the Committee's Secretary, James Freis, lately of the legal division of the Bank for International Settlements and presently with the U.S. Treasury Department.

The Report of the Committee is presently posted on the ILA Website. Unfortunately the draft posted on the day of the Working Session, June 7 had not been circulated to the Committee as a whole and so the portion on Terrorist Financing, written by Mr. Baxter and Mr. Freis, both members of the American Branch and presented to the Conference at the Working Session (and engendering a lively debate among ILA members, some of whom had different views than the authors concerning the trade offs between stopping "terrorist financing" and privacy and other human rights) cannot be considered the views of the Committee as a whole. The remainder of the Report, containing sections on International Financial Standards (written by Cynthia Lichtenstein and Dr. jur. Klaus Follak), Legal and Regulatory Developments Relating to Clearing and Settlement (written by the former General Counsel to Euroclear, Mr. Diego Devos, now with the BIS), Regulatory Liability for Bank Failures (Mr. Charles Proctor), European Economic and Monetary Union and Single Financial Area (Mr. Sainz de Vicuna y Barroso and other members) and Islamic Banking and Finance, focusing on Malaysia (Mr. Gopala Krishnan Sundaram) was presented by those members present in Toronto (Cynthia Lichtenstein, Diego Devos, Charles Proctor, Rene Smits and Mr. Sainz de Vicuna y Barroso) and while in my opinion of considerable interest, generated less discussion. The portion of the Report on Clearing and Settlement should be of interest to any members of the Branch dealing with non-certificated securities (isn't that all of us these days?) and the portion on International Financial Standards concerns the process of promulgation of Basel II in the U.S. and in the E.U.

Finally, it is significant for the American Branch that MOCOMILA's Report to Toronto was dedicated to our late Treasurer and member of MOCOMILA, Dr. Michael Gruson, and that Tom Baxter gave a most moving tribute to Michael's memory at the Working Session.

International Securities Regulation Committee:

The Chairman of this Committee is an American Branch member, the Honorable Edward Fleischman. I commend to American Branch members the comprehensive Report of the Committee on a number of "hot" topics in international securities regulation, a Report which was posted on the ILA Website in due time after having been circulated and approved by the

Members of the Committee. As was the case with MOCOMILA, a number of Committee members made contributions and the Report in its final version was ably edited by the Committee's Rapporteur, Dr. Emilius Avgouleas (Hellenic Branch).

The Working Session of the Committee was somewhat truncated, as it was scheduled on the last working day of the Conference and unfortunately, Mr. Fleischman, who had spoken the day before at a Parallel Program had to return immediately to the States for personal reasons. However, excellent presentations on U.S. and British regulation of mutual funds, in particular on the topic of the FSA's current position on "unbundling" were given by Barbara Green, Templeton Funds, American Branch and Ida Levine, British Branch, Capital Group, London. A member of the German Branch also spoke on securities regulation in the E.U. Cynthia Lichtenstein, while not speaking, introduced the speakers in the absence of the Chairman and tried to present the Chairman's Introduction and Conclusion to the Report, including his concerns dealing with what might be called "over regulation" and the effects thereof on the capital markets.

UPCOMING CONFERENCES

OCTOBER 12-14, 2006 REGIONAL MEETING SALEM, OREGON

The ABILA is co-sponsoring a regional meeting, October 12-14, 2006, at Willamette University in Salem, Oregon. Entitled "Cultural Heritage Issues: The Legacy of Conquest, Colonization, and Commerce," the conference is being organized by Prof. James Nafziger and Willamette colleagues. It will bring together internationally recognized experts in law, archaeology, anthropology, and museum administration for a critical dialogue about the legal and ethical dimensions of cultural heritage issues. These issues loom large. For example, there has been intense debate about the disposition of artifacts acquired by the Nazis during World War II, the repatriation of classical treasures such as the Elgin Marbles, the disposition of the 9,000-year-old "Kennewick Man" skeleton under the Native American Graves Protection and Repatriation Act, and the looting of the Iraqi National Museum during the current conflict in the Middle East.

The 25 conference speakers include Dr. Kwame Anthony Appiah of Princeton University and author of *Cosmopolitanism: Ethics in a World of Strangers* (2006); Matthew Bogdanos, the U.S. Marine Reserve Colonel and Assistant District Attorney from New York

City who led the investigation into the looting of the Baghdad museum; James Pepper Henry of the National Museum of the American Indian; Judge John Jelderks, who wrote the decision in the Kennewick Man case; Richard Leventhal, Director of the University of Pennsylvania Museum of Archaeology and Anthropology; leading experts from the Federal Bureau of Investigation and the U.S. Department of State; as well as numerous other practitioners and scholars from Australia, Canada, Germany, Iraq, Italy, Nigeria, and the United States. Brochures about the conference have been sent to all ABILA members in the region. Further information and a registration form is available at the conference website: <http://www.willamette.edu/events/chc>.

LOUIS SOHN

Louis Sohn was the Bemis Professor of International Law at Harvard University for thirty-five years and subsequently taught at the University of Georgia and George Washington University law school. In addition to having authored many germinal publications about international environmental law, Professor Sohn was an influential participant in the United Nations Charter (particularly regarding the human rights aspects) and the 1972 Stockholm Conference on the Human Environment. He authored the environmental sections of the American Law Institute's Restatement (Third) of the Foreign Relations Law of the United States. Professor Sohn was President of the American Society of International Law and Chair of the Section of International Law and Practice of the American Bar Association.

A FEW WORDS ABOUT LOUIS SOHN

By Alfred P. Rubin

Lou and I first met in Racine, Wisconsin, about thirty years ago at a conference of international law professors. I asked him about the definition of "piracy" in one of the four 1958 Conventions on the Law of the Sea. His response was several hours in coming as he certainly thought through the problem (it involved the term regarding "illegal" acts, asking under what system of law was "illegal" to be defined. He replied that it was to be defined under international law). We struck up a friendship, which lasted for many years and included lunch in the neighborhood of Harvard where Lou was teaching at the time. In the meantime, first as a legal colleague then as a friend, Lou was influential and a major source of information about international law and the workings of the various hierarchies within that system. He died on 7 June 2006, leaving his wife of 65 years and many friends. He will be sorely missed by all of us, especially by me.

BOOK REVIEW OPPORTUNITY

Oxford University Press has offered to provide complimentary evaluation copies of its international law books to dues-paying ABILA members who prepare short book reviews (no more than 500 words) for publication in the ABILA Newsletter. Members interested in this program should review the list of recently published international law titles on Oxford University Press's website at www.us.oup.com/us/catalog/general/subject/Law/InternationalLaw/?view=usa. Members may also receive details of new Oxford University Press books in their chosen area of interest on a regular basis by signing up at www.us.oup.com/us/subscriptions/subscribe/?view=usa. Thereafter, they should contact Executive Committee member David Stewart at stewartdp@state.gov. Mr. Stewart, who serves as the ABILA liaison to Oxford University Press and oversees the Branch's book review program, will work out the necessary arrangements.

**INTERNATIONAL LAW WEEKEND — 2006
NEW YORK
OCTOBER 26-28, 2006**

The American Branch's 2006 International Law Weekend 2006 will be held on Thursday-Saturday, October 26-28, 2006, at the Association of the Bar of the City of New York (42 West 44th St, New York, NY). The theme this year is "The Evolving World of International Law." The event will explore the rapid evolution of public and private international law and the resulting consequences for the global legal environment. In more than 20 panels, experts will lead interactive sessions dealing with such topics as the increasing importance of international courts, escalating tensions between state sovereignty and human rights, the reasons for and consequences of the U.S.'s changing relationships with the rest of the world, and the importance of professional organizations in holding a mirror to power. Jose Alvarez, Hamilton Fish, Professor of International Law & Diplomacy at Columbia University School of Law and President of the American Society of International Law, will deliver the luncheon address on Saturday, October 26. For further information, please contact the co-chairs, Prof. Peter K. Yu (peter_yu@msn.com) or Lorraine Brennan (lbrennan@uscib.org). Registration information will be posted at the American Branch website, <http://ambranch.org>.

**INTERNATIONAL LAW WEEKEND—WEST
SANTA CLARA LAW SCHOOL
FEBRUARY 2-3, 2007**

The American Branch's 2007 International Law Weekend 2007 will be held on Thursday-Friday, February 2-3, at Santa Clara University School of Law in Santa Clara, California. The event will explore a range of topics in international scholarship. A series of concurrent panels will explore the laws of NAFTA and CAFTA; the impending extraordinary chambers of Cambodia to try the Khmer Rouge; the challenges of protecting intellectual property; developments in global injunctions; international judicial cooperation; the Alien Tort Statute litigation; the justice cascade in El Salvador; the domestication of international criminal law; climate change litigation; the future of democracy promotion after Iraq; international privacy law; and law, society and geography.

The luncheon keynote address, to be announced, is co-sponsored by the World Affairs Council. For further information, please contact Prof. Beth Van Schaack (bvanschaack@scu.edu) or the Santa Clara University School of Law Center for Global Law and Policy (cglp@scu.edu). Registration information will be posted at the American Branch website, <http://ambranch.org>.