



ILA—Founded 1873

Newsletter

ILW 2013 Well-Attended, Terrific Program

International Law Weekend 2013, and the 92nd Annual Meeting of the American Branch of the International Law Association, took place Oct. 24-26, 2013 in New York City. Over 1300 registrants participated in this event. The theme for ILW 2103 was “Internationalization of Law and Legal Practice.” The American Branch cosponsored ILW with the International Law Students Association.

The ILW Organizing Committee put together an extraordinarily diverse program of more than 30 substantive panels on such topics as issues in international litigation, intellectual property, children in armed conflict, the crisis in Syria, international commercial and investment arbitration, big data and privacy, outer



*President Wedgwood
Opens the Session*

space law, human trafficking, conflict in cyberspace, private international law, climate change, gender and disabilities law, international family law, crimes against humanity, and the project to revise the Restatement of Foreign Relations Law, to name just a few. Five simultaneous panels (or tracks) were run over the course of the conference. Also, for the first time, selected panels were accredited for Continuing Legal Education credits (our thanks to the American Society of Interna-

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THE 2014 BIENNIAL APPROACHES! Register Now

**ILA Biennial Conference
and ASIL Annual Meeting**
April 7 - 12, 2014

Ronald Reagan International Trade Center,
Washington, D.C.

REGISTER NOW at
<http://www.ila2014.org>.
Early Bird Registration Ends January
31, 2014

This spring, from April 7-12, 2014, the American Branch will host the 75th biennial conference of the International Law Association in Washington, D.C. The biennial conferences gather members from the ILA’s headquarters in London and its 49 national branches around the world. The ILA’s 24 substantive committees and its 11 Study Groups will hold Working Sessions as usual at Biennial Conferences to present and debate their ongoing work. The last time the American Branch hosted a biennial was in 1962.

All Branch members are strongly encouraged to attend this event and to register promptly. Deadline for reduced registration rates is January 31.

At this meeting, the Branch will partner with the American Society of International Law to combine the ILA Biennial with the ASIL Annual Meeting into a single, joint event. This unprecedented conference will mark a unique and historic gathering of the international law community.

The theme of the ASIL Annual Meeting Program is “*The Effectiveness of Interna-*

tional Law.” The week’s events are expected to draw upwards of 2000 international lawyers and will include keynotes by leading figures in the field.

Among the confirmed speakers are Radhika Coomaraswamy, former UN Special Representative of the Secretary-General on Children and Armed Conflict; former UN Special Rapporteur on Violence against Women (Grotius Lecture Wednesday, April 9, 2014); Sundares Menon, Chief Justice of Singapore, Thursday, April 10, 2014 (Brower Lecture); and Alain Pellet, University Paris Ouest (Hudson Medal Luncheon). There will also be the longstanding luncheon hosted by WILIG, the ASIL’s Women’s International Law Interest Group.

The Joint Conference will feature open meetings of ILA Committees and Working Groups, along with ASIL Interest Group meetings, as well as more than 40 substantive program sessions featuring panels, debates, and roundtable discussions on current issues in the field. Among the topics to be addressed are The Approach of Courts to Foreign Affairs and National Security, The Internet and International Law, The Effectiveness of the WTO in Dealing with Climate Change and Energy Initiatives, The Effectiveness of International Law Governing Cyberspace, and Domestic Human Rights Enforcement after *Kiobel*.

The ILA Executive Council meeting and the meeting of ILA Committee Chairs will take place Monday morning, April 7; the opening plenary will be that afternoon. The traditional Embassy night will take place on Wednesday. The ILA Closing Plenary will take place Friday morning, April 11; the reception and gala dinner will be held that

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ILW-MIDWEST

Washington University Law School, St. Louis

On September 19-21, 2013, the Whitney R. Harris World Law Institute at the Washington University School of Law hosted ILW-Midwest, centered on the theme *The Legal Challenges of Globalization: A View from the Heartland*. ABILA Vice-President Leila Sadat chaired the organizing committee, which included ABILA members Shahram Dana, Aaron Fellmeth, Michael Kelly, John Noyes (Chair, ABILA Executive Committee), Hari Osofsky, Jennifer Schwesig, David Stewart (President-elect) and Ruth Wedgwood, ABILA's President. The conference was well-attended and superbly organized.

Speakers and panels addressed topics on a dozen key legal issues facing the international community today, from international contract farming to regulating commercial space markets to current issues in international criminal law to climate change. The conference underscored the increasing impact of globalization on many different areas of law. Many of the papers presented will be published in a special symposium edition of the Washington University *Global Studies Law Review*.

Three keynote addresses were given at the conference. The first, by ABILA President Ruth Wedgwood, Edward B. Burling Professor of International Law and Diplomacy at Johns Hopkins University, was an impassioned plea for paying reparations to victims of the cholera epidemic that has ravaged Haiti since 2010.

Mary Ellen O'Connell, the Robert and Marion Short Professor of Law and Research Professor of International Dispute Resolution at the University of Notre Dame, discussed lawful and unlawful methods of controlling arms, from weapons of mass destruction to autonomous robots. David Wippman, Dean and the William S. Pattee Professor of Law at the University of Minnesota also spoke. His remarks on "How We Talk about International Law" provided a thoughtful perspective on the challenges scholars and lawyers have in expressing the full tour de force of international law in the 21st century.

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ILA SOUNION REGIONAL CONFERENCE

Report by Prof. Chiara Giorgetti

The Hellenic Branch of the International Law Association organized a Regional Conference on August 29-31, 2013 at the European Public Law Organization (EPLO) premises of Cape Sounion in Greece. The theme of the 2013 regional conference was *Imperium Juris: Governance, Trade, Resources*.

The conference was a great success and brought together members of the academic and professional community to discuss current challenges facing the rule of law on an international level, with particular references to issues of governance, trade, and resources. As explained by Professor Photini Pazartzis, President of the Hellenic Branch "these areas are at the heart of current developments on the global and regional scene, within a framework of international regulations, multiple actors, changing patterns of authority between and within States, emerging global needs leading to a renewed attention to human rights, resources and development. They are also of particular interest for this region, where new challenges and novel opportunities meet age-old rivalries and entrenched long-term practices."

Professor Pazartzis and Professor Christos Gortsos, Chair of the Organizing Committee, together with the other members of the Organizing Committee did a superb job in organizing a thought-provoking, interesting and smooth conference.

The conference began with a Governance Plenary discussing the important issue of "The Judiciary and the Rule of Law." The roundtable was chaired by Konstantinos Menoudakos, President of Hellenic Conseil d'État. Other participants included H.E. Awn Alkhasawneh, former Judge of the International Court of Justice and former Prime Minister of Jordan, Christos Rozakis, President of the Administrative Tribunal of the Council of Europe and The Rt. Hon. The Lord Mance, Supreme Court of the United Kingdom and Chair of the ILA Executive Council. Fittingly, the conference concluded with a roundtable celebrating the UNCLOS Birthday Party: 30 years forward, chaired by Alexander Yankov, former Judge of the International Tribunal for

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CALENDAR

ABILA, ILA, and Other Events

The American Branch will co-sponsor several presentations in the IICAS/UCSD-CWSL Speakers Series on "NAFTA: 20 Years Later."

On January 14, 2014, Prof. Jorge Durand, Princeton University, will talk about "Free Trade Agreements and Migration;" on January 24, The Hon. William C. Graham, Former Minister of Foreign Affairs and International Trade of Canada, will talk about "NAFTA, Free Trade and the Americas: The Canadian Perspective;" and on March 12, Prof. Robert Blecker, American University, will speak on "The Mexican and U.S. Economies: Twenty Years after NAFTA and Six Years after the Crisis." For more information, contact mblas@cwsll.edu.

The ABA's Section of International Law 2014 Spring Meeting will be held in New York City April 1-5, 2014. The American Branch is a cooperating entity for this event. For more information, visit <http://ambar.org/ilspring2014>.

The ILA will hold a regional conference in Lisbon on **September 11-12, 2014** on "Towards a Universal Justice? Putting International Courts and Jurisdictions into Perspective." For information, visit <http://www.ila-hq.org>.

The ABA's Section of International Law will hold its next fall meeting on October 21-25, 2014, in Buenos Aires.

The ILA's 76th Biennial Conference will take place in South Africa from August 21-26, 2016.

If you are interested in hosting an event or have suggestions for future events, please contact Rachel Smith, the Branch's Program Director, programdirector@ila-americanbranch.org.

NEWS OF BRANCH AND ILA COMMITTEES

For information about the several dozen ILA and ABILA committees and their on-going projects, see <http://www.ila-hq.org/en/committees> and http://www.ila-americanbranch.org/Branch_Comm.aspx.

We welcome news of ABILA committees and members. It's easy to let us know: simply email your news to abilanews@gmail.com.

American Branch Committees

A few new committees are in the process of being formed. Lelia Mooney, Co-Chair of the United Nations and International Organizations Committee in the ABA's Section of International Law, will chair a new ABILA committee on the International Law of Business and Human Rights. Paul Stevens, an associate at Dechert, is in the process of forming an ABILA Committee on International Securities Law. If you are interested in participating in either or both, contact Ms. Mooney (leliamooney@yahoo.com) or Mr. Stevens (paul.stevensjr@gmail.com).

Accountability of International Organizations

Osmat Jefferson and Matthew Parish, Co-chairs

Dr. Matthew Parish and Ms. Greta L. Rios published on the committee's website: "Wrongful acts of international organizations: No effective remedy means no responsibility." In 2012, Professor Osmat Jefferson wrote a chapter on the right to a judicial court in *International Organizations*, which will be published in early 2014. During the course of her research, she generated another database of almost 300 cases of ILOAT judgments between 2009 and 2012 with all kinds of information relevant to understanding the internal and informal mechanisms of governance at especially those international organizations that subscribe to ILOAT. Osmat is happy to share the database with any of the Committee members who are interested in building on this research.

International Commercial Arbitration

Anibal Sabater, Chair

The Committee presented a panel at ILW 2013: Thinking Ahead: Six Questions to Ask at the Beginning of An International Arbitra-

tion, with chair Ted Howes and panelists Oliver Armas, Eric Schwartz, and Joachim Thole.

Formation of Rules of Customary International Law

Brian Leopard, Chair

During the past year Committee members have discussed launching a study of the status of international human rights law as customary international law, possibly in collaboration with the Branch's Committee on Human Rights. This would be a comprehensive study of the customary law status of human rights, building on the study that Prof. Richard Lillich led at the Buenos Aires Conference of the International Law Association in 1994 on the status of the Universal Declaration of Human Rights in national and international law, and also on the 2000 study of the International Law Association, published at its London Conference, entitled "Statement of Principles Applicable to the Formation of General Customary International Law."

Settlement of Disputes Involving States

Chiara Giorgetti and Rahim Moloo, Co-chairs

This Committee is the successor in interest to the Committee on the Intergovernmental Settlement of Disputes. The first goal of the new chairs is to identify a critical mass of people to help us build a community. As part of that initiative, they hosted an ILW 2013 panel on Standards of Review in Investment Arbitration, and hope that forum helped to identify some interested people.

International Commercial Law

Jessica Simonoff, Chair

We have a new chair of the International Commercial Law committee, Jessica Simonoff at Freshfields in New York. She invited committee members to work toward two goals over the coming year: first, to increase the involvement of private law firms in our activities (as part of the broader Branch effort to developing and implementing strategies along this line) and second to create a useful platform for committee members to publish articles, case notes, or other items that may be of interest to our community. I would like to invite anyone who has an interest in managing that platform or submitting material for publi-

cation to contact me about this initiative. These projects will provide lots of opportunities to take on active roles in the Committee's work.

International Criminal Court

Jennifer Trahan, Chair

The Committee sponsored a panel at this year's ILW entitled "Prosecuting Heads of State at the ICC: Bashir and Kenya," featuring Estonian Ambassador and President of the ICC Assembly of States Parties Tiina Intelmann; U.S. Ambassador-At-Large Stephen J. Rapp, Office of Global Criminal Justice; former Chief Prosecutor of the Special Court for Sierra Leone David M. Crane; and Director of Human Rights Watch's International Justice Program Richard Dicker. The Committee also urged Ambassador for War Crimes Steven Rapp, and Assistant Secretary of Defense, Detainee Policy, Bill Lietzau, to consider strengthening its interrelationship with the International Criminal Court. The letter set forth concrete steps the U.S. government could take to strengthen its commitment to the International Criminal Court.

International Environmental Law

Wil Burns and Günther Handl, Co-Chairs

The Committee sponsored an ILW 2013 panel on the upcoming COP19 meeting of the UN-FCCC. In 2012 the Committee co-sponsored the International Wildlife Law Conference at Stetson and will do so again in 2014. It is also developing a podcast series on international environmental law issues which we hope to launch in May 2014, entitled "IEL 101."

International Human Rights

Aaron Fellmeth, Chair

The Committee organized a panel for ILW-Midwest in September 2013, chaired by Janet Levit from the University of Tulsa and entitled "The Role of Institutions in Developing and Enforcing International Human Rights Law." On the panel, in addition to Dean Levit, were Mark Osiel, Leila Sadat, Paul Dubinsky, and Christopher N.J. Roberts. The Committee also presented a panel at ILW 2013 entitled "The Globalization of Child Rights and Remedies," chaired by Professor Fellmeth and featuring Susan Bitensky, Sara Dillon, Karl

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ILW 2013 (cont'd)

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tional Law for their assistance in helping us make this possible).

ILW 2013 included an In-House Counsel's Roundtable and three well-attended "career panels" which were especially directed at those interested in exploring options and "pathways" in the various fields of international law. ILW began on Thursday evening, October 24, with a distinguished opening panel at the House of the Association of the Bar of the City of New York. The opening panel addressed the topic: "The International Arms Trade Treaty: Reducing Human Suffering through Global Rules?" A reception sponsored by the Permanent Mission of Mexico to the United Nations, which was open to all conference attendees, followed.

The conference continued on Friday, October 25, at Fordham Law School. The program included a keynote address by ASIL President Donald Donovan and an evening reception hosted by the Permanent Mission of the European Union to the United Nations. On Saturday, October 26, the conference featured more excellent panels as well as the annual members meeting of the International Law Students Association (ILSA) and the annual members meeting of the American Branch. The ABILA Executive Committee also met.

A total of 37 law and professional schools, 12 law firms, 3 publishers and 6 NGO's and professional societies sponsored ILW 2013 (the entire list is at the end of this Newsletter).

The ILW 2013 Program Committee was chaired by Ms. Vivian Shen (ILSA) and Prof. Jack Beard (University of Nebraska College of Law) and included Prof. Aaron Fellmeth (Arizona State University School of Law), Nancy Thevenin (Baker & McKenzie), Steven Hammond (Hughes Hubbard & Reed) and Blanca Montejó (the UN Office of Legal Affairs). ABILA President Ruth Wedgwood played a key role.

Our thanks to all who participated, those who sponsored and supported, and especially to those who helped organize and make this a great success.

ILW-MIDWEST (cont'd)

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Other lectures and panels covered such topics as: International Law and Practice in Times of Change, The South China Sea: The Intersection of Politics and International Law, International Contract Farming (UNIDROIT), Regulating and Incentivizing New and Existing Commercial Space Markets, The Role of Institutions in Developing and Enforcing International Human Rights Law, Current and Future Trends in Private International Law, The Role of Local Efforts in Addressing "Global" Climate Change, Current Issues in International Criminal Law, Cross-Border Regionalism and the Public-Private Divide, Careers in International Law, and The Future of Human Rights Litigation in the Wake of *Kiobel*.

The Branch's regional conferences are superb ways to bring the excitement and relevance of international law to venues beyond the New York-Washington-Boston corridor. Earlier this year, the University of Denver's Sturm College of Law hosted a very successful ILW-West.

Perhaps other institutions would be interested in sponsoring a regional ILW in the coming year. To discuss, contact David Stewart at stewartd@law.georgetown.edu.

For inquiries about membership in ABILA, please contact:

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The 2014 Biennial (cont'd)

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evening. The final Jessup Competition International Rounds will take place on Saturday, April 12.

Accommodations at conference rates are available at the JW Marriott on 1331 Pennsylvania Avenue. Springtime is always crowded in Washington, especially during "Cherry Blossom" season, so attendees are urged to make their hotel reservations at the conference hotel or elsewhere as early as possible.

The Annual Meeting of the Branch Executive Committee will be held following the Biennial.

On the joint organizing committee for the joint meeting, ABILA has been represented by Branch President Wedgwood along with Profs. Nafziger and Stewart. Prof. Lichtenstein is the Branch's Honorary Treasurer for the event. Executive Committee member Larry Johnson has served on the joint ASIL/ABILA Program Committee.

Student Reporters Needed For the Biennial

We are looking for a number of law students to help ILA committees in recording their deliberations at the Spring Biennial and to provide other assistance. Reduced registration fees for volunteers.

Please contact David Stewart at stewartd@law.georgetown.edu.

VISIT THE AMERICAN
BRANCH WEBSITE:
WWW.ILA-AMERICANBRANCH.ORG

BRANCH AND ILA COMMITTEES (cont'd)

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Hanson, and Shifa Alkhatib.

International Intellectual Property **Peter Yu, Chair**

The Committee continues to work on a study of the relationship between intellectual property and human rights. The project focuses in particular on article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights - the provision that recognizes "the right of everyone ... [t]o enjoy the benefits of scientific progress and its applications." It has yet to be authoritatively interpreted by a general comment of the U.N. Committee on Economic, Social and Cultural Rights.

At ILW 2013, the Committee sponsored a panel on "Intellectual Property and the Right to Science," in which Peter Yu (Drake), Farida Shaheed (UN Special Rapporteur in the Field of Cultural Rights), Audrey Chapman (Connecticut), Molly Land (Connecticut) and Jessica Wyndham (AAAS) discussed the nature, scope and meaning of the right to "enjoy the benefits of scientific progress and its applications."

On February 21-22, 2013, the Committee co-sponsored a conference on intellectual property and human rights at American University Washington College of Law in Washington, D.C. The event was jointly organized with American, Drake, Duke, and New York Law School.

International Monetary Law **Jim Sobel & Jeremy Pam, Co-Chairs**

Jeremy Pam of Columbia Law School has agreed to co-chair the Committee with Jim Sobel, the current chair of the Committee. They will work together on a mandate that closely tracks what MOCOMILA (the ILA Committee on International Monetary Law) is doing.

Islamic Law **Robert E. Michael, Chair**

Mr. Michael is trying to launch a project to study the extent to which Islamic Law is used in Shari'a and non-Shari'a courts around the world. He would welcome vol-

unteers for the project.

Law of the Sea **George Walker, Chair**

The Committee sponsored an ILW 2013 panel entitled "Oceans Law and the Practitioner."

Several committee members are active in the ILA Committee on Baselines Under the International Law of the Sea. Coalter Lathrop, who acted as Rapporteur through last year, led the development of the report that was published in the ILA *Report of the Sophia Biennial Conference*. He continues to be a member of the ILA Committee, which is now chaired by Ashley Roach, who is also an ABILA LOS Committee member.

Other ABILA Committee members who are also active in the ILA Baselines Committee include Michael Reed, John Noyes, and George Walker. The ILA Committee in fact met during the 2013 ABILA annual meeting to consider its first Interim Report. Commentators have occasionally cited the book, *Definitions for the Law of the Sea: Terms not Defined by the 1982 Convention*, published by Brill under Committee auspices.

Space Law **Henry Hertzfeld and Matthew Schaefer, Co-Chairs**

In September 2013, the Committee organized a panel at ILW-Midwest which focused on "Regulating and Incentivizing New Commercial Space Markets." It featured talks by Professor Mark Sundahl of Cleveland Marshall College of Law (on ITAR and the Space Assets Protocol to the Capetown Convention), Giugi Carminati of Berg & Androphy (Houston) and co-author of ABA-published *The Laws of Spaceflight* (on state liability immunity legislation), and Professor and Director of the Space, Cyber and Telecom LL.M. Matthew Schaefer, University of Nebraska College of Law and Co-Chair of the ABILA Space Law Committee (on third-party liability issues and space debris remediation).

The Committee also organized a panel at ILW 2013 on "Complexities of Regulating the Outer Space Domain by Analogy to Legal Regimes in the Other Four Domains." The panel chair was Matthew Schaefer, University of Nebraska, and the speakers were Henry Hertzfeld, Research Professor, Elliott School of International Affairs at The George Washington University and members of the Space Policy Institute; Marc Holzapfel, Senior Vice-President and General Counsel, Virgin Galactic; Laura Montgomery, Senior Attorney, Office of General Counsel, Federal Aviation Administration; Tim Nelson, Partner, Skadden, Arps, Slate, Meagher & Flom LLP; and Frans von der Dunk, Professor of Law, University of Nebraska Law College.

Teaching of International Law **Mark Wojcik, Chair**

The Committee presented a panel at ILW 2013 on "Same-Sex Marriage Under International Law," including a focus on international family law for teachers of international law and teachers of family law. It is also preparing two workshops, one to be held in Chicago on "Teaching International Law" during 2014 and the second on "Teaching International Legal Research" to be held in Chicago or Washington, D.C. during 2014 or 2015. It is also preparing a panel for the ninth Global Legal Skills Conference, which will be held in Verona, Italy from May 21-23, 2014. It will be a co-sponsoring organization of the Global Legal Skills Conference in Verona.

Extraterritorial Jurisdiction Committee **Bruce Bean, Chair**

At ILW 2013, the Committee presented a program entitled "American Legal Imperialism? The Extraterritorial Application of American Law." An extraordinary audience completely filled the room.

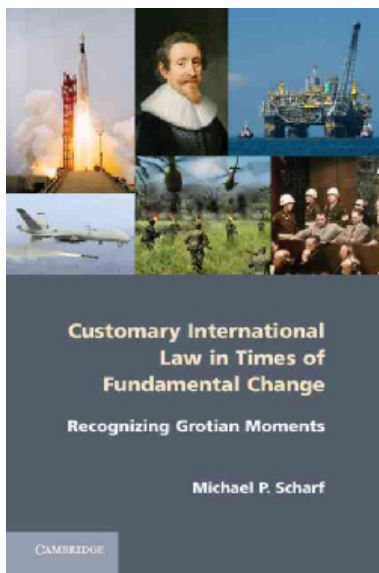
The presentations began with Professor Michael Koehler (Southern Illinois Law School) describing DOJ enforcement practice under the Foreign Corrupt Prac-

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BOOK REVIEW

CUSTOMARY INTERNATIONAL LAW IN TIMES OF CHANGE: RECOGNIZING GROTIAN MOMENTS.

By Michael P. Scharf. Cambridge University Press, 2013. Reviewed by Edward Gordon.



This is an enthusiastic brief for the proposition that a context of fundamental technological or social change can serve as an accelerating agent that enables customary international law to form much more rapidly and with less state practice than is normally the case. Such a “paradigm-shifting accelerant” constitutes a “Grotian Moment,” a description that seeks to associate accelerated customary law with the relative speed with which Grotius’s ideas took hold in the systemic upheaval that preceded the advent of a sovereignty-oriented legal order in the 17th century.

As Scharf notes, neither the concept nor the name it bears is new, both having been introduced by Richard Falk in the mid-1980s. Its application in an international criminal trial is new, however, having been used successfully for the first time by Scharf himself, in his capacity as Special Assistant to the Prosecutor of the Extraordinary Chambers in the Courts of Cambodia, a tribunal created by the UN and the government of Cambodia to prosecute former leaders of the Khmer Rouge for atrocities committed during the years 1975-79. The defense had moved to exclude criminal liability for a so-called “Joint Criminal Enterprise,” a formulation akin to the felony-murder rule in American law in which a person who will-

ingly participates in a criminal enterprise can be held criminally responsible for acts of other members of the enterprise even if those acts are not part of the plan. Few countries have such a rule, but Scharf was able to persuade the trial court that it has nonetheless become an accepted part of the law applicable to international criminal trials.

Just what constitutes a “Grotian Moment” and how to recognize that one has occurred are problematical, doubly so since the concept of customary international law itself has long been criticized as ambiguous, subjective and almost infinitely manipulable. Combining the two concepts as the basis for a charge of criminality consequently arouses suspicion that its hidden agenda is to provide legal footing for what might otherwise be regarded as *ex post facto* criminality, or what is known and barred in international law under the principle *nullum crimen [or nulla poena] sine lege* (a person should not face criminal punishment except for an act that was criminalized by law before he/she performed the act). The brutal acts committed by the Khmer Rouge, after all, had occurred a quarter century before the trial, at a time when, however heinous, their status as a crime under international law might have been considered less than self-evident.

Scharf does not lessen this suspicion by arguing that, in confirming that a Grotian Moment has taken place, General Assembly resolutions and judgments of international tribunals often play a heightened role. Treating General Assembly resolutions as law-confirming is apt to be seen as a selective end run around the UN Charter’s deliberate denial of legislative authority to the General Assembly.

Coincidentally or not, it also enhances the already suspect *de facto* power of legal scholars to arbitrate the question of which resolutions confirm the emergence of a rule of customary law. Ascribing a law-confirming authority to international courts, at least some of them, and some of the time, adds to the problem by investing international judicial decisions with the law-creating authority enjoyed by their domestic counterparts in common law countries. These features are not apt to be welcomed wholeheartedly by those who already regard the work of international criminal tribunals as illustrations of victor’s jus-

tice, used at the insistence of Western states that refuse to allow their own nationals to be subject to the jurisdiction international criminal courts.

Professor Scharf anticipates and deals with some of these criticisms, first, by seeking to explain how Grotian Moments differ from others, and, second, by devoting a chapter to each of six recent historical events to illustrate which of them constitute such a moment and why. His examples are the Nuremberg judgments, the Truman Proclamation on the Continental Shelf, outer space law, the Yugoslav Tribunal’s *Tadic* decision (specifically, that the rules applicable to international armed conflict apply to internal conflicts as well), the 1999 NATO intervention in Serbia, and extraterritorial aspects of U.S. responses to 9/11. These examples alone are likely to stimulate vigorous debate.

One last word, strictly *obiter dictum*. Associating the legal consequences of social change with Grotius has the advantage of investing it with a heritage it doesn’t otherwise merit. At the same time, it inadvertently brings to mind that Grotius’s own trial, conviction and sentence of life imprisonment were carried out by a group composed mainly of his religious and political enemies, empowered in the wake of an extra-legal coup d’etat. Even more awkward for present purposes is the fact that the verdict itself had to be rewritten a year after it was handed down, without a rehearing, in the face of criticism that what it described did not then constitute a crime under the laws of the young Dutch republic.

BOOK REVIEWS

The Branch has an arrangement with Oxford University Press. If you would like to contribute a book re-view, please contact Tiffany Basciano at tbascial@jhu.edu. Please specify the book you have in mind.

Can You Help with the Branch Newsletter?

The Newsletter is one of the best ways to communicate with Branch members about events and developments of shared interest. To contribute materials, to assist or to volunteer to be the editor, please email abilanews@gmail.com.

ILA Committees (cont'd)

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tices Act. Bruce Marks (Marks & Sokolow) described his experiences with the Racketeer Influenced and Corrupt Organizations (RICO) Act. Tom Firestone (Baker & McKenzie) described his eight years with the Justice Department in the U.S. Embassy in Moscow, where he closely followed the Bank of New York case and trained Russian organizations in anti-corruption matters.

Committee Chair Bruce Bean opened the discussion by suggesting several issues the EJC might consider in the future, including actions by U.S. Special Forces in Somalia and Tripoli, extraterritorial applicability of the Securities Acts and the Alien Tort Statute, U.S. discovery in support of foreign litigation pursuant to 28 USC 1782, and a case currently before the Supreme Court, *DaimlerChrysler AG v. Bauman*.

Other possibilities include the SEC's Dodd-Frank-mandated study of the possibility of extraterritorial application of a private right of action under Sec. 10(b)(5), application of the Foreign Account Tax Compliance Act, which is claimed to make foreign banks agents of the Internal Revenue Service, and judicial supervision of non-prosecution agreements (NPA) by both the DOJ and under the new United Kingdom NPA procedures effective in February 2014.

ILA Committees and Study Groups

For information on membership on ILA Committees and Study Groups, visit http://www.ila-hq.org/en/committees/committees_further_information.cfm. For information about American Branch members serving on ILA committees, see http://www.ila-americanbranch.org/London_Comm.aspx. To express an interest in membership on an ILA committee, please contact Prof. Ruth Wedgwood at president@ila-americanbranch.org and American Branch Director of Studies Prof. Andrea Bjorklund at andrea.bjorklund@mcgill.ca. Membership on ILA committees is limited.

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Sounion Conference (cont'd)

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the Law of the Sea and President of the ILA.

Other highlights included panel discussions on "Governance and The multitude of Actors"; "Managing Shared Resources," "Regionalism and the WTO," "New Challenges Confronting Sustainable Development," "New Problems in the Old Industry of Shipping," and "Straining the structures as a governance problem."

ABILA was well-represented. Prof. Andrea Bjorklund, ABILA's Director of Studies, discussed the important and novel issue of "Protection of foreign investment: A corpus juris?" in the panel "Protecting Foreign Investments. Chiara Giorgetti, co-chair of the Committee on inter-State Disputes, discussed the issue of "Between flexibility and stability: Ad hoc procedures and/or judicial institutions?" within a panel addressing dispute settlement and compliance mechanisms

Attendees were also treated to wonderful events aimed at exploring Greece, including a visit to the Museum of the Acropolis in Athens and a visit to Cape Sounion and dinner by the Temple of Poseidon. Proceedings of the Conference will be published as an e-book later in the year. For more information, see the website of the Hellenic Branch at <http://www.ila-hq.org/en/branches/index.cfm/bid/1007>.

ILA study groups are composed of international experts; members are not nominated by branches. Michael Schmit of the American Branch was recently named to the Study Group on Conduct of Hostilities under International Humanitarian Law. For more information, see http://www.ila-hq.org/en/committees/study_groups.cfm.

The International Human Rights Law Committee (Christina Cerna, Chair) held an inter-sessional meeting Dec. 6-7, 2013 at the University of Essex, Colchester, England to prepare its Final Report. The Committee has also proposed a panel for the 2014 ILA Biennial Conference/ASIL Annual Meeting to be held in Washington. The Committee expects to conclude its work in April 2014 and will present its final report at that time.

News of ABILA Members

Judge Brower Honored

On April 23, 2013 the ABA Section of International Law bestowed its Lifetime Achievement Award on ABILA Honorary Vice-President and Patron Charles N. Brower. Our heartiest congratulations.

ALI Restatement of Foreign Relations Law

A number of ABILA members are actively involved in the effort recently undertaken by the American Law Institute to revise the Restatement (Third) of Foreign Relations Law. In fact, four of the project's eight reporters are Branch members, including Prof. Paul Stephan (one of the two overall coordinators) and Profs. Anthea Roberts, Curt Bradley and David Stewart.

The list of Counselors and Advisers includes Profs. David Caron, Ralf Michaels, Michael Reisman, Chimène Keitner, Sean Murphy, Linda Silberman, Beth Stephens, Peter Trooboff as well as Donald Donovan (ASIL President).

The ALI's Members Consultative Group includes Honorary Vice-President Cynthia Lichtenstein, Honorary Treasurer Houston Putnam Lowry, Vice-President Leila Sadat, Director of Studies Andrea Bjorklund, and Executive Committee members William Aceves, Ronald Brand, Charles N. Brower, Linda Carter, Roger Clark, Harlan Cohen, Norman Greene, Mark Janis, Nancy Perkins, Robert Sloane, David Sloss, Abby Smutny, Louise Ellen Teitz, George Walker, and Don Wallace (apologies to any we have overlooked).

Publications

Oxford has published Prof. Curt Bradley's new book on *International Law in the U.S. Legal System*. It was reviewed by Hon. Vice-President James Nafziger at 61 Am. J. Comp. L. 901-908 (2013).

Prof. Nafziger's *Transnational Law of Sports* (International Law series, #4) was published by Edward Elgar in November
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ABILA Executive Committee News

At its meeting on October 26, 2013 in New York, the Executive Committee reviewed the status of the Branch's budget, membership, and good governance process. ABILA President Wedgwood emphasized the importance of fundraising and the need to encourage members to become patrons. Reports were given on the various Branch publications (the *Proceedings*, *Newsletter*, *International Practitioners Notebook*, and the ILA's biennial *Reports*). An effort is underway to revise the Branch website, in particular to include a discussion area and a means for committee members to communicate and share work.

The Executive Committee also established a Nominating Committee, composed of Catherine Amirfar, Scott Horton, Prof. Phil Moremen, and Prof. Ved Nanda, to oversee nominations for upcoming elections to the Executive Committee and to explore the creation of additional positions. The Nominating Committee will propose a slate for election at the 2014 Annual Members Meeting of the Branch, which is scheduled for Washington, D.C. in April, following the close of the ILA Biennial Conference. As part of its process, the Nominating Committee will evaluate all current members.

At the Annual Members Meeting on October 26, 2013, reports were given on ILW, ILW-West and ILW-Midwest, on membership and on finance, as well as on preparations for the biennial in spring 2014. A report was received from Prof. Andrea Bjorklund, Branch Director of Studies, concerning Branch Committee activities; some of those activities are highlighted elsewhere in this *Newsletter*.

ABILA Membership Renewal

It's not automatic, so kindly renew your membership by contacting Seana Cuevas at Munger, Tolles & Olson LLP
355 S. Grand Ave., 35th Fl.
Los Angeles, CA 90071-1560
Seana@ila-americanbranch.org

ILA Executive Council News

The Executive Council of the International Law Association held two meetings in London during 2013.

At the Spring Meeting on May 11, Prof. John Noyes, Chair of ABILA's Executive Committee, represented the Branch, along with members Prof. Cynthia Lichtenstein, Vice Chair of the Executive Council of the ILA, and Prof. James Nafziger, a co-opted member of the Council. A main topic was planning for the ILA's 76th Biennial Conference, to be hosted by the American Branch in Washington, DC, on April 7-12, 2014, in conjunction with the annual meeting of the American Society of International Law. The South African Branch will host the following Biennial Conference in August 2016, followed by Australia (August 2018).

The Executive Council approved a committee to study possible revisions to the ILA Constitution and governance structure. Prof. Catherine Kessedjian of the French Branch will chair this study committee, and Prof. James Nafziger of the American Branch will be a member.

The Executive Council also approved American Branch members for the following ILA committees: International Family Law (Melissa Kucinski); International Law and Sea Level Rise (Prof. Elizabeth Bursleson, Prof. Charles Norchi, and Peter Prows (alternate)); Role of International Law in Sustainable Natural Resources Management for Development (Prof. Charles Marvin); Space Law (Prof. Matthew Schaefer); and Use of Force (Prof. James Kraska). In addition, Prof. Christopher Borgen of the American Branch was recently named Co-Rapporteur of the Committee on Recognition/Nonrecognition in International Law. The Executive Council also approved a new Committee on the Protection of Privacy in Private International and Procedural Law, chaired by Prof. Dr. Burkhard Hess, Executive Director of the Max Planck Institute Luxembourg of International, European and Regulatory Procedural Law.

At the Fall Meeting on November 2, the Branch was represented by President Ruth Wedgwood, President-elect David Stewart, and Executive Committee member Louise Ellen Teitz. Lord Mance was re-elected chair for a further four years. ILA Vice-Chair Cynthia Lichtenstein paid tribute to former ILA President Cecil

Olmstead, who had also been ABILA president and who passed away on June 25, 2013. Again, preparations for the 2014 Biennial were a main topic of discussion. An ILA Steering Committee for the 2014 Biennial was approved, consisting of Lord Mance, Prof. Brus, David Wyld, Bruce Mauleverer, Prof. Lichtenstein, Prof. Stewart, Prof. Strydom and Prof. Hofmann.

An initial discussion took place on the subject of potential constitutional changes. Proposals for changing the functions of the Policy and Finance Committee were also debated. Agreement was reached to begin raising money for a Scholarship Fund to assist students (especially from countries in which ILA branches have been under-represented) to attend biennial conferences; Prof. Catherine Kessedjian will coordinate that effort.

In addition, on the basis of the report of the ILA Director of Studies, Prof. Marcel Brus, two new committees were approved: a Committee on the Implementation of the Rights of Indigenous Peoples (to be chaired by Professor Willem van Genugten, with Rapporteur Dr Federico Lenzerini) and a Committee on Complementarity in International Criminal Law (chair and rapporteurs to be announced).

Two study groups were also approved, one on Cyber-Terrorism and International Law, chaired by David Fidler (American Branch) with co-Rapporteurs Dr Russell Buchan (British Branch) and Emily Crawford (Australian Branch), and one on Preferential Trade Agreements, chaired by Andreas Ziegler (Swiss Branch) and Peter-Tobias Stoll (German Branch).

Several American Branch members were approved for the following ILA committees: Prof. Lelia Sadat (International Human Rights Committee), Prof. David Caron (International Law and Sea Level Rise), Prof. David Stewart (Protection of Privacy in Private International and Procedural Law), and Prof. Ved Nanda (Role of International Law in Sustainable Natural Resource Management).

NEWS OF MEMBERS

Please let us know your news, including announcements of publications, appointments, achievements, success and other noteworthy accomplishments.

Simply email abilanews@gmail.com.

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2013. His book on *Cultural Heritage Law* (International Law Series) was published earlier in the year. His work, with Robert Patterson, entitled *Handbook on the Law of Cultural Heritage and International Trade* (Research Handbooks on Globalisation and the Law) is due out in January 2014.

Cynthia Lichtenstein's "Distinguished Essay: Reflections on the Intellectual History of the International Regulation of Monetary Affairs," will soon be published at 5 European Yearbook of International Economic Law 3-16 (2014) (eds. Herrman, Krajewski and Terhecte, Springer-Verlag Berlin Heidelberg).

West has published *International Criminal Law in a Nutshell* by Prof. David Stewart.

Cambridge has published *Forging a Convention for Crimes Against Humanity*, edited by Prof. Leila Sadat.

Cambridge has also published Prof. Michael Scharf's new book, *Customary International Law in Times of Change: Recognizing Grotian Moments*.

Prof. Valerie Epps has published the fifth edition of her text on *International Law* (Carolina Press).



Lelia Mooney has edited *Promoting the Rule of Law: A Practitioner's Guide to Key Issues and Developments*, with a foreword by Justice Richard Golstone (ABA Section of International Law).

A new volume entitled *International Investment Law and Arbitration: Cases, Materials, and Commentary* by Andrea Bjorklund and Andrew Newcombe is due out in January.

Other News

Anibal Sabater, a partner at Fulbright & Jaworski LLP whose practice centers on International Arbitration and Disputes, has relocated to the firm's New York offices.

Prof. Micahel Scharf was recently named acting co-dean of Case Western Law School.

In October the Hon. Theodor Meron was re-elected president of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Mechanism for International Criminal Tribunals.

Prof. Robert Lutz co-organized the ABA Delegation to the UN Forum on Business & Human Rights in Geneva as well as a major program for the Forum on "Mobilizing Lawyers to Advance the Business and Human Rights Framework: Regional and Global Perspectives." He also authored "The Globalization of Professionalism" chapter in a recently ABA published book on *The Essential Qualities of a Professional Lawyer*.

New Members

We welcome Daniel E. Vielleville, Assouline & Berlowe; Paul Stevens, Jr. (former student member from Tulane Law School); Joshua L. Root (former student member); Rahim Moloo, Co-Chair, Committee on Disputes Involving States; Norman L. Greene, Schoeman, Updike, Kaufman, Stern & Ascher LLP;

Melissa Kucinski, of Global Family Mediation; and Hon. Mimi Tsankov, University of Colorado Law School.

RECRUIT A NEW MEMBER

At the end of 2012, the Branch membership stood at 330, of which 269 were individuals; 24 were organizations or institutions, and 37 were student associates. By contrast, some 1300-1400 people registered for ILW 2012 and 2013.

Every ABILA member is urged to recruit at least one new member between now and ILW 2014.

Besides ILW, ILW-Midwest and ILW-West, membership offers the chance to participate in important committee work and in regional and institution-sponsored events.

Members receive the Branch's biennial *Proceedings*, the ILA's biennial *Report*, and the Branch's annual *International Practitioner's Notebook*.

Our goal continues to be to double the number of individual members this year, especially by reaching out to students and recent graduates.

For information about ILA, ABILA and co-sponsored events, please see:

www.ila-americanbranch.org/ABILA_ILA_Events.aspx

ILW 2013 Sponsors: Thanks to you all!

Organizing and orchestrating International Law Weekend is a very significant undertaking of the American Branch and the International Law Students Association. Because by long-standing tradition it has been open to all attendees without registration fees, we depend heavily on the generosity of our wonderful contributors and supporters.

We take time here to recognize and applaud those who gave generously in support of ILW 2013, acknowledging that many have given over a period of years to keep the ILW tradition going.

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 American Bar Association, Section of International Law
 American Society of International Law
 American University Washington College of Law
 Amherst College, Department of Law, Jurisprudence and Social Thought
 Arizona State University, Sandra Day O'Connor College of Law
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