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**I. THE AMERICAN BRANCH  
OF THE INTERNATIONAL LAW ASSOCIATION**

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**THE INTERNATIONAL LAW ASSOCIATION AND THE  
AMERICAN BRANCH OF THE  
INTERNATIONAL LAW ASSOCIATION**

The International Law Association was founded in Brussels in 1873 and is considered the preeminent private international organization devoted to the development of international law. As a nongovernmental association with consultative status in the United Nations, its debates at its biennial conferences have in many cases influenced subsequent sessions of the United Nations General Assembly. Academic scholars, practitioners, and government lawyers travel from afar to press adoption of resolutions that have often influenced the development of international law. No major school of international law is now unrepresented at the conferences. Records of the debates and of the resolutions adopted are published by the Association and circulated widely throughout the world.

Members of the Association are grouped into over forty "national" branches. Individuals from countries in which numbers of international lawyers are still too few to form a branch are listed as members of "Headquarters" in London, where the Secretary General of the Association maintains his office. The study of international law is conducted in various committees composed of specialists chosen from the membership to represent widely different approaches. These committees function under a Director of Studies so as to prepare reports that may be presented and debated at the biennial conferences. Resolutions often flow from these debates.

Members of the branches are automatically members of the Association. They appear at conferences as individuals rather than as "national" delegations. There is no voting by branches.

Customarily one branch after another invites the Association to hold its biennial conference within its country. The chairman of the host branch is elected President of the Association to serve until the next conference. Five members of the American Branch have been Association Presidents.

Members of the Association from the United States of America enter the Association by joining the American Branch. Its history is illustrious, and, indeed, the role of Americans has been notable since the very founding of the Association itself. The history of these events is set forth in the essay prepared by Dr. Kurt H. Nadelmann, which is printed at pp. 2-15 of the 1977-1978 *American Branch Proceedings and Committee Reports* and is found also in 70 *American Journal of International Law* 519 (1976).

Committees of the American Branch, usually paralleling the committees of the Association, study problems in international law. Customarily these committees prepare reports that are published for each world conference in these *Proceedings of the American Branch*. These reports represent no official United States view, nor even the view of the Branch itself, but rather the divergent views of committee members. In light of this divergence, reports often contain

minority positions opposed to the majority. Since members attend the world conference as individuals, minority members of committees may speak as freely on the floor of the conference as the spokesperson for the committee majority.

The American Branch is autonomous. It holds its own annual meeting, elects its own officers, collects its own dues, and appropriates its funds as it wishes, except for that portion of the dues payable to Association headquarters.

From 1873-1882 the Branch existed under the name of "The International Code Committee of the United States." The present American Branch was formally established on January 27, 1922, in New York City as a result of an initiative taken by the American members of the International Law Association who attended the Association's 30th Conference held in 1921 at The Hague: Hollis R. Bailey of Boston, Oliver H. Dean of Kansas City, Charles B. Elliott of Minneapolis, Edwin R. Keedy of Philadelphia, and Arthur K. Kuhn of New York. Hollis R. Bailey became the first President; Arthur K. Kuhn the first Secretary. Chief Justice William Howard Taft was the first Honorary President.

Of the annual or biennial conferences of the International Law Association, five have been held in the United States. At the invitation of the American Bar Association, in 1899, the 18th Conference was held in Buffalo, New York, and, in 1907, the 24th in Portland, Maine. The American Branch was host to the 36th, 48th, and 55th Conferences held in New York City in 1930, 1958, and 1972, respectively.

Among the Presidents of the Association were a number of Americans. David Dudley Field, who had been elected Honorary President at the founding conference in Brussels in 1873, served as President in 1874, 1875, and 1878. Simeon E. Baldwin was President in 1900, and John W. Davis in 1930; Oscar R. Houston served from 1958 to 1960, and Cecil J. Olmstead from 1972 to 1974. Cecil J. Olmstead was Chairman of the Association from 1986 to 1988 and is now a Patron of the Association. Mr. Olmstead is currently one of two Patrons of the Association (the other being Lord Wilberforce). Robert B. von Mehren is one of the three Vice-Chairmen.

The list of the past American Branch Presidents reads: Hollis R. Bailey (1922); Charles B. Elliott (1923); Harrington Putnam (1924); Robert E.L. Saner (1925); Arthur K. Kuhn (1926); Edwin R. Keedy (1927); Amos J. Peaslee (1928); Edmund A. Whitman (1929); John W. Davis (1930); Oscar R. Houston (1931); Howard Thayer Kingsbury (1932); Paul H. Lacques (1933); Fred H. Aldrich (1934); Joseph P. Chamberlain (1935); William J. Conlen (1936); Lewis M. Isaacs (1940-1943); William S. Culbertson (1944-1948); J.W. Ryan (1948-1951); Clyde Eagleton (1951-1958); Oscar R. Houston (1958-1959); Pieter J. Kooiman (1959-1963); Cecil J. Olmstead (1963-1972); John N. Hazard (1972-1979); Robert B. von Mehren (1979-1986); Cynthia C. Lichtenstein (1986-1992); Edward Gordon (1992-1994); Alfred P. Rubin (1994-2000); James A.R. Nafziger (2000-2004). The present President is Charles D. Siegal, elected in 2004.

For more information about the American Branch and its Committees, the current Co-directors of Studies' Report, the Branch's current newsletter, and

Branch archives, see the American Branch's website at <http://www.ambranch.org>. The web site also has links to the headquarters site of the ILA in London as well as to other international law sites.

## **II. INTERNATIONAL LAW WEEKEND**

## INTERNATIONAL LAW WEEKEND 2004

### THE LAW OF INTERNATIONAL SPORTS DISPUTES(

James H. Carter(

In 1997, my predecessor as President of the American Society of International Law, Anne Marie Slaughter, wrote that international governance is evolving into a trans-governmental order of “courts, regulatory agencies, executives and even legislatures...networking with their counterparts abroad, creating a dense web of relations.” International sports dispute law is an example of private international law created by such a “transnational network.”

The Court of Arbitration for Sport (“CAS”), sometimes referred to as the “Supreme Court of World Sport,” is a new international institution at the heart of the transnational network. It is not a governmental entity. Instead, it is an NGO to which private or quasi-public sports federations and individuals have adhered voluntarily.

Sports are of a popular passion, hence of disputes. As a leading sports arbitrator has written:

“For good or for bad, few passions are as widely and as profoundly shared around the globe as the passion for sport. Its symbolism is often awesome. It brings out the noblest human qualities (good sportsmanship, the quest for excellence, a sense of community), and the basest (chicanery and mob violence). It is also big international business. Its capacity to motivate vast populations is nothing less than fabulous, and so naturally exercises a powerful attraction on those who would use its magic for their own ends. The appetite for political influence and for money moves the heart inside the business suit with a force as primal as that of the dreams of glory that swell the distance runner’s tunic.

“In a word, the realm of sport is that of a precious commodity. Therefore it is coveted. It is also an internationally significant resource which can be squandered or debased. Therefore the way it is controlled is not indifferent. And at the heart of the issue of control is that of ultimate authority to establish norms and to settle disputes.”

#### A Tale of the 1990s: Out of Chaos, A Little Order

Let me begin with where matters stood at the beginning of the 1990s: in the words of Professor James Nafziger, a leading U.S. sports law scholar, the situation then was “an overlapping and confusing array of international, national, governmental and nongovernmental institutions.” The paramount

reality was the traditional power of sports federations (national and international):

“Typically, the exclusive jurisdiction of sporting authorities is set down in the by-laws of federations which grant licenses to compete in the course of a season or admission to participate in specific events. The federation in question has generally existed for decades if not generations, and has, without any outside influence, developed a more or less complex and entirely inbred procedure for resolving disputes. The accused participant, on the other hand, often faces the proceedings much as a tourist would experience a hurricane in Fiji: a frightening and isolated event in his life, and for which he is utterly unprepared. The same may of course be said for most litigants in ordinary court proceedings. The difference is that whereas in the latter context the accused may be represented by experienced practitioners who appear as equals before the court, the procedures devised by most sports federations seems to be so connected to the organization that no outsider has the remotest chance of standing on an equal footing with this adversary – which is of course the federation itself.”

One who has been there described such a proceeding as “trying to swim up the Niagara Falls.”

Another important factor at the beginning of the 1990s was the threat of national court intervention, with risks of delay and conflicting rulings. The temptation for an athlete sanctioned by his or her federation was to challenge the decisions in what the athlete could reasonably expect to be a sympathetic “home town” court.

The disputes in the world of sports, then as now, were varied. Typically sports disputes are classified as either disciplinary or contractual; but that categorization fails to capture their true variety. Another way to think of it is to view the disputes as occurring among various different types of actors. First are disputes between an athlete and a federation, at the national or international level, which could include either disciplinary matters, eligibility/selection or doping. Or, disputes may involve national versus international bodies. These would include appeals of national federation decisions on athletes to the international level and disputes over rules governing federations or clubs. Yet another category of cases involves commercial contract disputes (sponsorship, sale of TV rights, player transfers among professional teams).

At the beginning of the 1990s, these disputes were decided by dozens of separate disciplinary and other bodies, with often opaque procedures and no common jurisprudence. But that began to change due to the role of the CAS, which had been formed in 1984 by the International Olympic Committee (the “IOC”). It originally had 60 members, appointed for 4-year terms by the IOC, the international federations, the national Olympic committees and the IOC

President (15 appointees each). All costs initially were borne by the IOC. The CAS is based in Lausanne, and all hearings are sited there, which assures Swiss jurisdiction for review. Appeal is available only on points of law, not solely on application of sporting rules.

By the early 1990s a network of submission agreements (among athletes and national/international federations) began to form, in which a significant number of them accepted the CAS as their sport's disputes resolution mechanism.

However, questions remained concerning how national courts would view the CAS. These were highlighted by the Elmar Gundel case, decided in 1993, which led to sweeping reforms. The case involved a positive drug test, but of a horse rather than an athlete. A German rider, Mr. Gundel, was disqualified by his federation based on a finding of negligence, and a suspension and fine were upheld by a CAS panel. Mr. Gundel appealed to the Swiss Federal Tribunal, which affirmed the CAS decision; but the court criticized the multiple links of the infant CAS to IOC. If the IOC had been a party, the result could have been different.

#### Reorganization of the CAS

This warning from the Swiss Supreme Court led to a reorganization of CAS in 1994 and the creation of an International Council of Arbitration for Sport (ICAS) to replace the IOC as a governing body of the CAS. It has 20 members, who are "high level" judicial figures worldwide (including HE. Judge R.S. Pathak of India). They cannot themselves participate in arbitrations. The Council elects its own president.

The Court of CAS arbitrators also was expanded. It now must include at least 150 arbitrators (currently there are more than 180), appointed for renewable four-year terms, of widely diverse nationalities. There are currently 3 Indian members, according to the CAS website. The U.S. members (about 35) are former athletes, now sports officials, usually lawyers, as well as "arbitrators chosen from among personalities independent of sports organizations."

CAS funding no longer comes entirely from the IOC but is a responsibility shared among the federations, the IOC and private companies using the CAS. In effect, the CAS also is subsidized by the arbitrators (whose charges are limited to a relatively nominal hourly rate, currently €135). The CAS now has a detailed set of rules (the Code of Sports-related Arbitration), including distinct Ordinary and Appellate jurisdictions, and it also renders advisory opinions. CAS appellate decisions are published. Unless another body of law is chosen by the parties, Swiss law governs. Besides its Lausanne headquarters, the CAS has decentralized offices in Sydney and New York City.

In the U.S., the Amateur Sports Act requires National Governing Bodies for each sport to agree to submit disputes to binding arbitration and permit U.S. Olympic athletes to appeal decisions by the USOC to arbitration. Most are heard by the North American Court of Arbitration for Sport, comprised of the North American CAS members. The AAA provides administrative support to the North American CAS. This Court's work recently has been primarily adjudication of doping charges by the U.S. Anti-Doping Agency against individual athletes.

The CAS has become widely known primarily due to the work of its ad hoc Olympic divisions, the first of which sat in 1996 in Atlanta. Normally all Olympic cases are decided on the scene, within 24 hours. However, an Olympic case can be converted to an ordinary case to be heard Lausanne if there is no time pressure.

#### Events of 2003 Solidified the Role of the CAS

In 2003, the status of the CAS again was considered by the Swiss Federal Supreme Court. In an appeal of a finding of doping offenses against two skiers, the Court reviewed the steps taken to reorganize the CAS in 1994 and held it to be a fully independent and impartial arbitral tribunal, separate from the IOC.

The CAS also was designated in 2003 by the World Anti-Doping Agency ("WADA") as the court of final review for international disputes involving doping, solidifying its role in this important area of sports law.

The CAS caseload also has become quite substantial. Through December 31, 2003, the CAS received 550 requests for arbitration and 71 requests for advisory opinions.

#### Some Important Themes of CAS Jurisprudence

The CAS has published a large number of its awards, which deal with a wide variety of subjects. A few themes of this jurisprudence are particularly noteworthy. The first of these is not actually a product of CAS decisions, but a consequence of CAS practices that make it a true arbitral forum entitled to the benefits of an international treaty, the New York Convention. This has the effect of excluding intervention of domestic courts, other than those of Switzerland, to entertain challenges and attempts to set aside awards, because the CAS in all cases legally sits in Lausanne. The leading case clarifying this is *Raquz v. Sullivan*, decided by the New South Wales, Australia, Court of Appeal in 2000. It involved a dispute over which two Australian Judo athletes was properly nominated by the Australian Olympic Committee. The case was decided by a

CAS panel physically present in Australia, as part of the 2000 Olympics; but the local court declined to intervene because the athletes had agreed to an arbitration situated legally in Switzerland.

A second main theme is demarcation of “playing field” disputes. A key case in this line of authority involved a French boxer in the 1996 Olympics. He was accused of hitting below the belt, which the referee ruled he had done. The CAS panel wrote:

“When examining its competence, the Panel must first note that the decision by the AIBA to reject the protest, thereby confirming the referee’s decision, is typically a decision relating to sport and the rules to which a sport is subject.

“Traditionally, doctrine and judicial practice have always deemed that games rules, in the strict sense of the term, should not be subject to the control of judges, based on the idea that ‘the game must not be constantly interrupted by appeals to the judge’ (judgment by the Swiss Federal Tribunal ATF 118 II 12/19).

“The traditional theory is thus that only sports decisions ‘which damage the personality or property of the athlete’ should be reserved for the ordinary or arbitral courts.”

\* \* \*

“The referee’s decision, confirmed by the AIBA, is a purely technical one pertaining to the rules which are the responsibility of the federation concerned. It is not for the ad hoc Panel to review the application of these rules. This restraint is all the more necessary since, far from where the action took place, the ad hoc Panel is less well-placed to decide than the referee in the ring or the ring judges. The above-mentioned restraint must be limited to technical decisions or standards; it does not apply when such decisions are taken in violation of the law, social rules or general principles of law, which is not the case in this particular instance.”

There have been a number of CAS cases involving this “field of play” principle, a recent example of which arose during the Athens 2004 Olympics involving a Gennan equestrienne. The Ground Jury failed to reset a time clock, which led them to charge her with arguably excess penalty time. The CAS panel held that it would not review rulings “on the playing field” except where bad faith or malice is demonstrated, and that this was not such a case.

Another widely discussed case from the Athens Olympics involved U.S. gymnastics gold medal winner Paul Hamm and Korean silver medalist

Yang Tae Young, who challenged the judges' decision in favor of Hamm on the basis of a wrongly-assigned degree of difficulty that was not noticed until the event was concluded. The CAS case was filed at the end of the Olympics and was referred to regular CAS procedures for hearing in Lausanne. The CAS decision in October 2004 essentially followed the case of the French boxer, upholding the referees' decision.

Field of play or "game rule" issues can arise in unusual forms. One of these involved "Long-john" swimsuits approved by the international swimming federation. An advisory opinion on the property of this rule was sought by the Australian Olympic Committee before the 2000 Olympics, and the CAS Panel found no reviewable issue: permissible costumes are also part of the "rules of the game" and beyond arbitral reach unless rules are "contrary to the general principles of law, if their application is arbitrary, or if the sanction provided by the rules can be deemed excessive or unfair on their face."

A third theme is the continuing policing of what might be seen as federation high-handedness. A recent example is the Torri Edwards case from the Athens 2004 Olympics. The CAS panel affirmed a doping sanction on the basis of strict liability and upheld a finding that "exceptional circumstances" were not established. But it pointedly criticized the relevant federation rules as "unclear" and criticized the federation's attempt to limit the scope of substantive review of a ruling from its own review board in the face of a broad submission to CAS arbitration.

Finally, it is noteworthy that CAS Panels have shown practicality in accommodating athletes wherever possible. At the Athens Olympics, as at many sports events, issues arise involving which athletes will be selected for national teams or allowed to progress from trial to final events. A review of the most recent decisions shows that CAS Panels work toward constructive solutions that will accommodate athletes in such situations wherever it can be done by, for example, adding competitor "slots."

#### Conclusions

There is much more that could be said about international sports law, including discussion of decisions regarding nationality, anti-discrimination and a range of doping-related matters. No doubt, this jurisprudence will continue to grow as the network of athletes, referees, sports officials and arbitrators who have built it go about their work.

## INTERNATIONAL LAW WEEKEND 2006

International Law Weekend 2006 was held October 26-28, 2006, at the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York City. The theme of the Weekend was *The Evolving World of International Law*. The three-day event explored the rapid evolution of public and private international law and the resulting consequences for the global legal environment. The conference featured numerous distinguished speakers on over thirty panels. All panels were open to students and all members of the American Branch and co-sponsoring organizations without charge.

The opening panel was held on Thursday evening, October 26, 2006, and was entitled *From Nuremberg to Saddam Hussein: The Challenges for Promoting World Peace Through the Rule of Law*. The panel was chaired by Peter Yu, and included Gary Bass, Malvina Halberstam, David Luban, Leila Nadya Sadat and Michael Scharf.

Panels on Friday morning, October 27, 2006, were:

- *Enforcing Foreign Judgments and Awards: Worlds Apart?* (chaired by Julie Bédard)
- *The Future of International Arbitration in Latin America* (chaired by Nancy Thevenin)
- *Definitions for the 1982 Law of the Sea Convention: Recent Developments in the Law of the Sea* (chaired by George Walker)
- *The Emerging "Responsibility to Protect:" Challenges of Implementation* (chaired by Ved Nanda)
- *From Owusu to Parlatino: European Union and Latin American Challenges to Forum Non Conveniens* (chaired by Michael Wallace Gordon)
- *How Much is Enough? U.S. Securities Regulation in the Face of Global Capital Markets* (chaired by Steven Davidoff)
- *The Legal and Financial Implications of the Kyoto Protocol Clean Development Mechanism* (chaired by Edna Sussman)
- *Water, Law, and Society in Contemporary China* (chaired by Andrew Mertha)

Friday's box lunch seminars addressed:

- *The Rosneft Public Offering: Putin's Syndication of the Gulag?* (chaired by Bruce Bean)
- *Most Significant Events in International and Hybrid Tribunals* (chaired by Katherine Gallagher)

Lawyers Without Borders also held a lunch meeting to discuss matters of interest.

These seminars were followed on Friday afternoon by panels entitled:

- *The Evolution of International Courts* (chaired by Houston P. Lowry)
- *International Mergers and Acquisitions* (chaired by Hon. Thomas B. Leary)
- *The Use of Anti-suit Injunctions to Enjoin Foreign Proceedings and International Arbitrations* (Dana C. MacGrath)
- *Global Patent Law Harmonization: Problems and Prospects* (chaired by Aaron Fellmeth)
- *What Did the Framers Know and When Did they Know It?* (chaired by Paul R. Dubinsky)
- *Recent Developments and Future Trends in Private International Law* (chaired by David P. Stewart)
- *Is the Fair and Equitable Treatment Standard Fair and Equitable?* (chaired by Tal-Heng Cheng)
- *Development, Innovation and International Legal Regimes: The Politics of Knowledge and Knowledge Goods* (chaired by Tayyab Mahmud)

On Friday evening, October 27, the Permanent Mission of New Zealand to the United Nations hosted a Gala Reception. The American Branch is grateful to the New Zealand Mission for its hospitality and generosity.

Saturday morning, October 28, featured an array of panels. The topics addressed included:

- *New Developments in International Human Rights Law* (chaired by Christina M. Cerna)
- *Conservative Bastion or Progressive Problem Solver: The Evolving Face of Military Jurisprudence and International Law* (chaired by Charles H. Rose III)
- *Should the Relationship of WTO Obligations to U.S. Law Be Reinvented?* (chaired by Patrick Reed)
- *When Globalization Hits Home: Hot Topics in International Family Law* (chaired by Barbara Stark)
- *The Role of Customary Law in International Law Today* (chaired by Phillip Moremen)
- *Teaching International Law in a Globalized World* (chaired by Keith R. Fisher)
- *The European Union in 2006: A Report Card* (chaired by Richard E. Lutringer)

- *International Law and the Humanities* (chaired by Susan Tlefenbrun)

The American Branch's annual luncheon, held at the House of the Association of the Bar of the City of New York, featured José E. Alvarez, Hamilton Fish Professor of International Law and Diplomacy, Columbia Law School and President, American Society of International Law.

International Law Weekend 2006 concluded on Saturday afternoon with panels on:

- *The Meaning of a Historic ASIL Resolution* (chaired by Benjamin G. Davis)
- *Ocean Law in the Twenty-first Century* (chaired by Howard S. Schiffman)
- *State Courts and Transnational Decision-Making: The Road Ahead* (chaired by Janet Levit)
- *Private Sector Codes, Certifications and Self-regulation: A New Trend in International Sales Law* (chaired by Marsha Echols)
- *Post Conflict Gender Justice* (chaired by Tracey Gurd)
- *Roundtable on International Law and Geography: Cross-Cutting Issues of Sovereignty, Identity, and Equity* (chaired by Harl Osofsky)
- *Harmonizing Disclosure Standards Across International Capital Markets and Corporate Governance Across Nations* (chaired by Erica Beecher-Monas)

Selected panel papers from International Law Weekend 2006 will be published in the ILSA Journal of International and Comparative Law. A complete listing of ILW 2006 programs, including program descriptions and the names of moderators and speakers, is archived on the American Branch's web site, <http://www.ambranch.org>.

**International Law Weekend 2006 was sponsored by:**

The American Branch of the International Law Association

*in conjunction with:*

American Bar Association

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*Co-chairs:* Lorraine M. Brennan and Peter K. Yu

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Barbara Stark  
David P. Stewart  
Edna Sussman  
Susan Tiefenbrun  
George K. Walker  
Charles D. Siegal, President  
American Branch of the ILA

## INTERNATIONAL LAW WEEKEND WEST 2007

International Law Weekend West 2007 was held February 2-3, 2007, at the Center for Global Law & Policy at Santa Clara University School of Law in Santa Clara, California. The two-day conference featured numerous distinguished speakers on eleven different panels, with an emphasis on the impact of globalization on the practice of law. All panels were open to students and members of the American Branch of the International Law Association, as well as to co-sponsoring organizations, free of charge. Reduced rates were offered for public interest attorneys.

The Weekend began with a Welcome Lunch in the Williman Room of the Benson Center on Friday, February 2, 2007.

The opening panels were “Recent Developments in NAFTA/CAFTA” and “Challenging the Assumption of Equality: The Due Process Rights of Foreign Litigants in U.S. Courts.” Friday afternoon panels included “Trying Enemy Combatants” and “Law, Society & Geography Roundtable.”

The Keynote Dinner was held on Friday evening at the Adobe Lounge. A reception immediately followed the evening’s dinner.

Panel discussions continued on Saturday, February 3, 2007. Saturday morning panels consisted of “The Impending Extraordinary Chambers of Cambodia to Prosecute the Khmer Rouge,” “Protecting Intellectual Property Abroad,” “Protecting the Cultural Heritage in War and Peace” and “Cybercrimes and the Domestication of International Criminal Law.”

Weekend West 2007 concluded on Saturday afternoon with the following panels: “The Future of Democracy Promotion After Iraq,” “The Justice Cascade in Latin America,” “Climate Change Litigation” and “Combating International Corruption Through Law & Institutions.”

A complete listing of ILW West 2007 programs, including program descriptions and the names of moderators and speakers, is archived on the American Branch’s website, <http://www.ambranch.org>.

### **International Law Weekend West 2007 was sponsored by:**

The American Branch of the International Law Association

*in conjunction with:*

American Bar Association Section of International Law  
Human Rights Committee  
International Environmental Law Committee  
American Branch of the International Law Association  
International Wildlife Law Committee  
American Society of International Law  
Indigenous Peoples Group  
International Environmental Law Group  
The State Bar of California  
International Law Section

International Law Weekend 2007 was held October 25-27, 2007, at the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York City. The theme of the Weekend was *Toward a New Vision of International Law*. The conference's discussions were aimed at addressing the following question: What would progress in international law look like? The three-day event featured distinguished speakers on nearly forty panels. All panels were open to students and all members of the American Branch and co-sponsoring organizations without charge.

The Weekend began on Thursday, October 25, 2007, with *Pathways to Employment in International Law*, a panel of scholars and practitioners sharing experiences and exploring employment opportunities in international law with students and young attorneys. An Opening Evening Reception was held at the House of the Association of the Bar of the City of New York. It was followed by the opening panel, *The Appropriate Role of International Law in Addressing Climate Change*, which was chaired by Hari M. Osofsky and included Dan M. Bodansky, William C.G. Burns, Mark Drumbl, Ruth Gordon and Ashley C. Parrish.

Panels on Friday morning, October 26, 2007, were:

- *Evaluating Progress in International Human Rights Institutions* (chaired by Christina M. Cerna)
- *The Confluence of Transnational Rules on Commercial Arbitration: What Harmonization and Where?* (chaired by Nancy Thevenin)
- *Definitions for the 1982 Law of the Sea Convention: Recent Developments in the Law of the Sea* (chaired by Nicholas Ulmer)
- *Taxation as a Global Socio-Legal Phenomenon*
- *The Convention on International Trade in Endangered Species at the Quarter Century Mark: A Critical Assessment* (chaired by William C.G. Burns)
- *If Not a "War," What? The Legal Regime(s) Governing Anti-Terrorism* (chaired by Thomas M. McDonnell)
- *The Strategy and Practice of International Litigation* (chaired by Daniel Tan)
- *The "Sacred Trust" and the "Strenuous Conditions" of Today's "Modern World": The Legacies of the League Mandates System* (chaired by Vasuki Nesiiah)
- *International Trademark Protection and the 2008 Beijing Olympics* (chaired by Peter Yu)
- *The Northwest Passage and Global Warming: Canadian Internal Waters or Sovereign Melt-Down of an International Strait?* (chaired by

Friday's box lunch seminars addressed:

- *Update on the ABILA Law of the Sea Definitions Project* (chaired by George Walker)
- *International Law and the "Frozen Conflicts" of Europe: The New York City Bar's Report on the Secessionist Crisis in Moldova and Its Implications for Other Conflicts* (chaired by Elizabeth Defeys)
- *International Arbitration: Fresh Ideas for a Changing World* (chaired by Janet Walker)

An Executive Committee meeting was held, followed by an American Branch general meeting. Lawyers Without Borders also held a lunch meeting to discuss matters of interest.

Friday afternoon panels consisted of the following:

- *The Future of International Justice* (chaired by Jennifer Trahan)
- *Crossing the Bridge: Canada/U.S. Trade and Border Security* (chaired by Wendy Wagner)
- *Made to Measure? Investment Protection and Arbitration Rights Under the Energy Charter Treaty* (chaired by Julie Bédard)
- *Developing International Private Law: Informing and Understanding Hard Law and Soft Law* (chaired by Ronald A. Brand)
- *Are There Lawful Exceptions to Investment Treaty Obligations?* (chaired by Tai-Heng Cheng)
- *A World of Free-Trade Agreements?* (chaired by Patrick Reed)
- *International Law, the U.S. Constitution and Counterterrorism* (chaired by Vincent J. Vitkovsky)
- *Judicial Review of Arbitration Awards in the United States, France and Canada* (chaired by Dana C. MacGrath)
- *Sanctions and the Future of the Nuclear Non-proliferation Regime* (chaired by Orde Kittrie)

The Permanent Mission of Pakistan to the United Nations hosted a Gala Reception on Friday evening, October 26, 2007. The American Branch is grateful to the Pakistan Mission for its hospitality.

Saturday morning, October 27, 2007 featured the following:

- *Expanding Notions of Extraterritorial Civil Jurisdiction* (chaired by David P. Stewart)
- *Shielding Citizens Abroad: The New Faces of Diplomatic*

- *Intersystemic Governance* (chaired by Robert B. Ahdieh)
- *Is the IMF Just a Twin of the Much Criticized World Bank or Does It Have New Direction and Function?* (chaired by Cynthia Crawford Lichtenstein)
- *A Critique of the International Legal Academy* (chaired by Roger Alford)
- *Treaties in U.S. Courts: Old Assumptions, New Developments* (chaired by Michael Ostrove)
- *Corporate Accountability for International Law Violations: Developments and Debates* (chaired by Nicholas R. Diamand)
- *The European Community at 50: Successes, Setbacks and New Challenges* (chaired by Roger Goebel)

The American Branch's annual luncheon, held at the House of the Association of the Bar of the City of New York, featured Robert B. von Mehren of Debevoise & Plimpton.

International Law Weekend 2007 concluded on Saturday afternoon with panels on:

- *Toward an Arms Trade Treaty?* (chaired by Pamela Maponga)
- *International Law-Making and Non-State Actors: Toward New Paradigms?* (chaired by Larry Catá Backer)
- *Re-examining International Responsibility: Inter-state Complicity in the Context of Human Rights Violations* (chaired by Meg Satterthwaite)
- *Inventing and Reviving International Legal Instruments to Address the Diversifications of International Security Threats* (chaired by Noemi Gal-Or)
- *The United Nations and Women: New Visions, New Hopes* (chaired by Kelly Askin)
- *Whither Reflaut Stercus?: Criminal Prosecution in U.S. Courts of U.S. Officials for Violations of International Humanitarian and Criminal Law* (chaired by Benjamin G. Davis)
- *Strategies for Identifying, Preventing or Halting Genocidal Campaigns* (chaired by Mark R. Shulman)
- *Interdisciplinary Approaches to International Law: Reflections on Benefits and Challenges* (chaired by Austen L. Parrish)

The ABILA Committee Chairs also held a workshop on Saturday afternoon to discuss what their committees can do in the future.

published in the ILSA Journal of International and Comparative Law. A complete listing of ILW 2007 programs, including program descriptions and the names of moderators and speakers, is archived on the American Branch's web site, <http://www.ambranch.org>.

**International Law Weekend 2007 was sponsored by:**

The American Branch of the International Law Association

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I propose to deal with a topic which is at the crossroads of what I see as the main tension in international law today. This is the tension—not to say more—between state sovereignty, on one side, and the protection of the human rights of individuals on the other.

It is quite banal to say that we are evolving from the Westphalian society where the state was at the center of everything and the sole subject of international law, to what some call the cosmopolitan society or—to be really “in”—the post-modern society, where the individual is the center or at least where numerous new private actors put in question the centrality of state sovereignty. These private actors range from multinational corporations and individuals to non-governmental organizations (NGOs), and pretend to become not only actors, but subjects of international law.

There is a topic where this conflict between state sovereignty and the protection of fundamental human rights reaches its climax—this is the question of state immunities. The parameters of the problem are quite simple, even if the ways to answer the problem are controversial.

The first element would be the fact that it is well known that in order to protect the sovereignty of states, immunities were granted to states and their representatives.

The second element that is raised today is the question whether these immunities should still stand when an international crime is committed. Before asking how this question should be resolved, I will study some elements of the general problem by firstly presenting the extent of the immunities granted to states and their representatives and secondly, the contours of what is known today as an international crime.

## **II. ELEMENTS OF THE GENERAL PROBLEM**

First, a few words on immunities—while clearly stating that I am not dealing here with national immunities, only with international immunities. Immunities are deemed to protect state sovereignty. Therefore, they benefit the state and its representatives, the heads of state, diplomats, and other high officials.

Immunities have two cumulative aspects: immunity from jurisdiction means that a state cannot be brought to court in another state against its will. Immunity from execution means that even if a state has accepted to go to court in another country, the judgment cannot be executed against it, and its assets and properties cannot be seized.

At the beginning these immunities were absolute. The state was always immune for all civil actions that could be brought against it. The acting heads of

state or diplomats were immune from all civil and criminal actions. The former heads of state and diplomats were immune for all acts performed in the exercise of their functions, which means that they could only be prosecuted for their private acts and only after they had left their functions.

It is quite clear that granting such broad immunities resulted in the irresponsibility of states and heads of states or diplomats. Everybody knows the famous story in the nineteenth century of the Sultan of Johore, Sultan Abu Bakar, who presented himself as Albert Baker. He was studying in England, dated an English girl, promised to marry her and then disappeared, so the girl sued him. The English courts determined in 1894 that they had no jurisdiction over an independent foreign sovereign, and did not grant any relief to the English girl.

It is also well known—and I give you this free advice as an international lawyer—that if you have a house or apartment to rent, do not rent it to a diplomat or a king. If they do not pay their rent, you cannot sue them because they have immunity.

With the development of the rule of law, these immunities are progressively shrinking. However, each attack on these immunities has led to huge controversy, and states have been extremely reluctant to see their privileges shrink and their accountability augmented. All the restrictions to immunities flow from the same idea that the sovereign function, and nothing else, is to be protected. In other words, all the acts that do not pertain to the sovereign function should be excluded from the benefit of immunities.

Two main evolutions can be witnessed. A first evolution towards a restrictive conception of state immunities is well known. It started at the beginning of the twentieth century, but really found its way in the 1970s when it was considered that what should be protected by immunities was the core political sovereignty. In other words, when a state acts *de jure imperii*, as a sovereign, it should be immune. When a state acts *de jure gestionis*, acting like an economic actor performing acts that anybody could do, like buying paper for the administration, it should not benefit from immunities. This evolution was not smooth and was strongly opposed by developing countries that, in the course of pursuing the development of their economy, considered that they were also acting as sovereign in fostering their economic sovereignty. However, the distinction between acts *de jure imperii* and acts *de jure gestionis* is today uncontroversial in its principle, although it is not always easy to characterize the different acts performed by states.

A second evolution, on which I shall concentrate, has started more recently, at the end of the 1990s, and has been launched by the development of a universal concern for human rights. This time, the idea is not only to exclude commercial acts, considered as outside the sovereign functions of the state, but also some acts so egregious that they should not possibly be considered as entering into the functions of the state or one of its representatives. More precisely, the question today is whether international crimes, whether attributed

to a state or one of its representatives, should benefit from immunities.

Secondly, after a presentation of the extent of state immunities, I will say a few words concerning the concept of international crime. This concept covers what the international community considers today as acts that should be condemned worldwide. These acts have therefore been qualified as international

crimes at the international level through custom or treaty. The international crimes that can be prosecuted before the International Criminal Court (ICC)—that the United States does not like, I should say, even hate—comport essentially the following:

- a) War crimes;
- b) Crimes against humanity;
- c) Genocide;
- d) Torture.

Now that the framework of the problem that I want to discuss with you is presented, I want to ask you the central question:

### **III. HOW TO SOLVE THE QUESTION RAISED?**

In your view: Can a state or a head of state claim immunity when there is an accusation of torture? So, I will ask you to vote: Who thinks that in order to maintain the stability of international society immunity should prevail when there is an accusation of torture? Who thinks that immunity should not be a bar to prosecution when there is an accusation of torture?

Both the judges of the International Court of Justice (ICJ) and of the European Court of Human Rights (ECHR), as unbelievable as it seems, have considered that immunities should prevail. I will refer to this later in more detail.

Also, I want to point out here that national courts are far more keen to have human rights prevail—like the *Ex parte Pinochet Ugarte* case illustrates—while international courts, rooted in the international system based on state sovereignty, have a tendency to protect this sovereignty far more than is acceptable in my view. In other words, the forces of progress that bring about less impunity are in national courts, whereas the forces of resistance are to be found in international courts. Today, we are in a transitional phase where the conflict of interest between these contradictory forces is not settled.

I will now illustrate what I just said with two examples: A criminal prosecution against a representative of a state accused of torture and a civil action for damages against a state for torture.

### **IV. A CRIMINAL PROSECUTION AGAINST A REPRESENTATIVE OF A STATE ACCUSED OF TORTURE**

Let us look successively at the manner in which the English courts and the ICJ have dealt with a criminal prosecution against a representative of a state accused of torture. I will first address the Pinochet cases and then the *Arrest Warrant of 11 April 2000* case involving the Democratic Republic of Congo and

A. *The Pinochet Case before the English Courts*

Here, we have a former head of state accused of torture. In 1998, Pinochet went to an English clinic. The lawyers of torture victims, injured under Pinochet's rule, asked that he be arrested. The High Court of London granted him immunity whilst the House of Lords, in two successive decisions, refused to grant him those immunities.

I recall here what I said earlier, that former heads of state will only be granted immunities for acts performed in the exercise of their functions. Of course, this can be analyzed in two different ways: acts performed in the exercise of their functions can mean that all official acts performed while in office are covered by immunity, and only private acts—like a head of state killing his wife—could be prosecuted. It can also mean that only those acts that can be considered as entering into the functions of a head of state will continue to enjoy immunity when he or she has left power.

It is well known that in the first decision of 25 November 1998, by a three to two majority, the House of Lords adopted a historic ruling revoking the immunity of Pinochet. In the second decision of 24 March 1999, the same solution was adopted by a six to one majority. Taken together the three minority Law Lords decided to stick with the traditional interpretation, according to which all official acts committed during the time when the head of state was in power, are covered by immunity.

The nine majority Law Lords adopted an innovative interpretation considering that certain unacceptable acts, like international crimes, must be considered *per se* as falling outside the functions of a head of state. Lord Nicholls, for example, stated that, and I quote “it hardly needs saying that torture of [Pinochet's] own subjects, or of aliens, would not be regarded by international law as a function of a head of state.” Lord Steyn added that it follows inexorably from the reasoning of the High Court granting immunity “that when Hitler ordered the ‘final solution’ his act must be regarded as an official act deriving from the exercise of his functions as Head of State.”

So, after the decisions in the *Pinochet* cases, it seemed clear that the acts for which a former head of state does not benefit from immunity are not only private acts that are *functionally outside* the exercise of official duties, but also international crimes like torture, which even if performed as part of the exercise of power, are to be considered as *teleologically outside* the functions of a head of state. But unfortunately, the situation is less clear after the decision of the ICJ in the *Arrest Warrant* case.

B. *The Arrest Warrant Case before the ICJ*

This case was brought by the Democratic Republic of the Congo (DRC) against Belgium before the ICJ. What triggered the case was an arrest warrant launched against the Minister of Foreign Affairs of the DRC by a Belgian judge using universal jurisdiction, permitting to prosecute in Belgium

Belgian judge using universal jurisdiction, permitting to prosecute in Belgium international crimes committed outside the country towards foreigners and by foreigners.

The DRC pleaded that this arrest warrant was violating the traditional immunities of a representative of the state. The ICJ considered that indeed this was so, which is not surprising, as the immunities of a person still in function are absolute. This was also reiterated by the Law Lords in the *Pinochet* case. Nonetheless, the Court decided to add an *obiter dictum* in order to reverse the solution adopted in the *Pinochet* case for former heads of state, when it stated: “a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in private capacity.” No word about the exclusion of international crimes committed while in function.

In my view, this statement is unfortunate, especially as the prosecution of a former head of state would permit a better protection of human rights, and does not endanger the state sovereignty, which is the basic justification for granting immunities.

Interestingly, we can perceive exactly the same dichotomy between national courts and international courts when the problem raised is a civil action against a state for damages due to torture.

## V. A CIVIL ACTION FOR DAMAGES AGAINST A STATE FOR TORTURE

### A. *In the National Courts*

Here, I have no breakthrough case like the *Pinochet* cases to present, but it is possible to say that there are some national decisions here and there that have lifted immunities when extremely serious violations of human rights were committed. I can give the example of a Federal District Court in the District of Columbia that refused the immunity to Chile for the murder of Mr. Letelier—who was Minister of Foreign Affairs of Chile and then Ambassador—by Chilean National Intelligence Directorate (DINA) agents in Washington, D.C. Many other examples could be given, but I would like now to proceed to present the position on the question at the international level.

### B. *In the European Court of Human Rights*

Here, I will speak of a famous case, the *Al-Adsani v. United Kingdom*

case. The facts were the following: Mr. Al-Adsani was a British and Kuwaiti citizen who was tortured in Kuwait and tried to obtain damages from Kuwait before the English Courts.

When the English Courts—High Court, Court of Appeal—granted immunity to Kuwait, Al-Adsani went to Strasbourg to the ECHR, claiming a violation of his right to a fair trial. By a decision rendered by a nine to eight majority on 21 November 2001, the European Court upheld the position of the

majority, on 21 November 2001, the European Court upheld the position of the English court—in other words, it considered that the commission of torture does not justify the lifting of immunity. Although the Court considered that torture was a violation of a *jus cogens* rule, it stated that the fact of granting immunity to a state in civil matters, even when torture is at stake, is not a disproportionate restriction to the access of justice guaranteed by Article VI of the European Convention on Human Rights.

Eight dissenting judges considered that immunity should not have been a bar to the granting of damages. Their reasoning was the following:

- 1) Torture is a violation of *jus cogens*;
- 2) Rules on immunities are not *jus cogens*
- 3) Immunities must be set aside so that *jus cogens* can prevail.

Although I consider the outcome of the dissenting opinion preferable to the outcome of the decision, I have to confess that I consider its reasoning as somewhat simplistic. The main reason why the dissenting opinion is not legally convincing is that, in international law, a hierarchy of norms only applies between norms having the same object. The *jus cogens* rule forbidding torture is a substantive rule, while immunities are a procedural device and so there is no evident hierarchy between them.

Does this mean that the solution of the Court should prevail? I do not think so—I think, on the contrary, that the solution of the dissenting judges should have been adopted, but on the basis of a legally stronger reasoning quite similar to the one adopted by the majority of the Law Lords in the *Pinochet* cases: immunities should have been lifted, as torture should be considered as outside the functions of a state.

If we summarize what is today the positive international law, it is possible to say that for states, immunity stands even in the face of an international crime like torture in civil actions. For heads of state and other representatives in office, immunity stands, as well, in the face of an international crime whether in criminal or civil cases. For former heads of state and other representatives of the state, immunity does not stand in criminal matters according to the House of Lords, but does stand according to the ICJ.

Of course, NGOs are advocating that the *Pinochet* solution should be extended to acting heads of state and that immunity should also be set aside for acting heads of state if they can be charged with an international crime.

Personally, I am not in favor of such a move as it might create political manipulations. As an example, I can cite a judgment of a court in Belgrade a few years ago sentencing George H. Bush, Jacques Chirac and Tony Blair to twenty years of prison because of war crimes committed by the North American Treaty Organization (NATO) in the bombing of Kosovo. This, of course, does not mean that I favor impunity for heads of state in office committing international crimes—they can indeed be prosecuted before the ICJ.

## VI. CONCLUSION

In conclusion, although there is still an intense debate, I foresee—or at least, I wish—that just as it is nowadays well accepted that immunity does not apply to acts *de jure gestionis* in civil matters, immunities should not be permitted to protect a state or its representatives either in criminal cases or in civil cases when an international crime is committed, since such an act should be considered as dramatically outside the functions of a state. Only then, could it be possible to say that there is a new vision of international law, where impunity of states and their representatives for international crimes, condemned by the international community, will no longer prevail.

**REMARKS OF ROBERT B. VON MEHREN ON THE  
OCCASION OF HIS BEING HONORED BY THE  
AMERICAN BRANCH OF THE ILA**

This year it is for me a most special one as you have chosen to honor me at this luncheon.

## I. AUTOBIOGRAPHY – THE ILA AND ME

I became a member of the American Branch in the early 1970s. The first significant task that I performed was in August 1972, when the 55th Conference of the International Law Association was held in New York. The ILA, which was founded in 1873, had held two earlier conferences here – the 36th in 1930 and the 48th in 1958. I played a small, but I hope, useful role in the 55th Conference. Cecil Olmstead was President of the American Branch and became President of the ILA at the opening of the Conference. In his Opening Remarks, Cecil noted that I had “organized the private hospitality which we believe to be one of the most important aspects of the entire week” (Report of 55th Conference, p. 9). Private hospitality involved the members of the host branch entertaining members of visiting branches at their homes on a fixed date during the conference. It contributed to many lasting friendships and was a very popular event. Unfortunately, it has not been continued with much vigor at recent conferences.

The next significant event in my service to the American Branch was in connection with the 58th Conference held in Manila. Professor John Hazard was President at this time and, as such, would have headed the American Branch’s delegation to Manila. John, however, found that he could not attend and asked me to head the delegation, a request to which I agreed. So my wife and I were off to Manila. Ferdinand Marcos was President at the time and he and his wife played prominent roles at the Conference. Indeed, she gave the Welcome Address and he the Keynote Address at the Inaugural Session. What I remember most about the meeting, however, was the fact that all heads of delegations were assigned military escorts. I had a captain as my aide-de-camp and my wife a lieutenant (a delicate reflection of the Philippine view of the family).

Shortly after the Manila Conference, I was elected President of the Branch in 1979 and continued in that capacity until 1986. I enjoyed my term of office and hope that I served it well. I had one matter that was upper most in my thinking about my successor. I had concluded that the American Branch should be headed by a woman. I was delighted when Cynthia Lichtenstein was elected in 1986 and I view her election as one of the most important events of my

presidency.

In 1986 at the end of the 62nd Conference held in Seoul, after twenty-two years of service, Lord Wilberforce decided to retire as Chairman of the Executive Council. Cecil Olmstead succeeded him and served in that capacity for four years. Cecil was succeeded by Gordon Slynn who began his service as Chairman and presided at the 64th Conference held in Australia in 1990. At this point, my participation in the work of the ILA shifted from the American Branch to the ILA. I was elected as Vice Chairman of the Executive Committee in

October of 1989 and spent considerable time in London in connection with its meetings and also functioned as Vice-Chairman at its conferences. I intend to resign from this post during 2008.

## II. MY EVALUATION OF THE INSTITUTION

Having given a brief account of my involvement in the American Branch and the ILA over the last thirty-five years, I offer an assessment of the institution they represent.

In my view, the ILA is the best and most rewarding of all the available options for American lawyers interested in international law as a whole. I should know. At one time or another I was a member and fairly active in most of the entities that are available to generalists. The ILA is one of the two to which I still belong. The other is the American Society of International Law.

Why do I rank the ILA as number one? My conclusion is based on two factors. First, the membership of the ILA and its 48 branches is diverse in terms of type of work and nationality. The latter, of course, is created by the fact that the committees are staffed by members of branches of diverse nationality. The former is assured by the flexibility of its committee structure and the subject matters that the committees consider. The Toronto Conference had reports from eighteen committees, all of which also had working sessions at the conference. The range of subject matter is most impressive. As listed in the Conference Report, it ran from international commercial arbitration to international securities regulation. The list includes cultural heritage law, feminism in international law, international law on biotechnology, and the teaching of international law. Thus, the practicing lawyer, the law profession, the civil servant, the corporate executive and other groups can find projects relevant to their interests within the ILA. It offers, in my judgment, the most sympathetic environments for work in many areas. The by-product of this is a highly intelligent and interesting membership. The second factor is the conference system that, every two years, creates stimulating programs and offers an opportunity to spend a week with colleagues from a multitude of states. This adds reality to the scholarly work and encourages international networking that is productive, both intellectually and socially.

## III. CLOSING

I thank you for this generous occasion. I thank you for being the American Branch which has been so important in continuing the work and traditions of the ILA. It has been a great pleasure for my wife and me to have spent this afternoon with you. I trust that we shall be able to attend many more international law weekends.



### III. AMERICAN BRANCH COMMITTEES

AMERICAN BRANCH COMMITTEES

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**COMMITTEES OF THE  
AMERICAN BRANCH OF THE  
INTERNATIONAL LAW ASSOCIATION**

**ARMS CONTROL AND DISARMAMENT**

**Chair:** Vacant

**BILATERAL INVESTMENT TREATY AND**

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### REPORT OF THE INTERNATIONAL HUMAN RIGHTS COMMITTEE

The Human Rights Committee of the International Law Association, American Branch, is co-chaired by Christina Cerna and Scott Horton. The Committee organized a panel for Saturday morning at the International Law Weekend, held on October 26, 2007 at the New York City Bar Association in New York. The panel focused on new developments in international human rights law during the past year and was chaired by Christina Cerna: Professor Philip Alston discussed the outcome of the UN reform process, Professor William Schabas discussed developments at the International Criminal Court, Professor Jonathan Hafetz discussed the issue of the Guantanamo detainees and habeas corpus and Professor Scott Horton discussed the issue of responsibility of private US

Professor Drew Kenon discussed the issue of responsibility of private US contractors in Iraq.

The Human Rights Committee collaborated on an amicus brief (with other organizations that have the lead on the issue) with regard to the Supreme Court litigation on the Guantanamo detainees (Boumediene case).

Christina Cerna is also a member of the ILA Committee on Human Rights Law and Practice and prepared a final version of her paper on the topic “Is the right to consular assistance an international human right?” for a meeting held in Siena in November 2007.

The ILA Committee met at Certosa di Pontignano in Siena from November 9-11, 2007 thanks to Professor Riccardo Pisillo Mazzeschi, who facilitated this beautiful venue outside Siena. The meeting discussed the papers prepared on the subject, “General International Law and International Human Rights Law” and refined the focus. Originally the Committee started with a fairly open approach to address the “relationship” between human rights law and (other parts of) public international law. At a later stage the discussion focused on the “humanization” of general international law by international human rights law. In Siena, the Committee agreed to drop or at least reduce the use of the term “humanization” and instead, focus on the “impact” of international human rights law on “general” international law.

The papers discussed at the Siena meeting were the following:

Martin Scheinin, “Human Rights Treaties and the Vienna Convention on the Law of Treaties”

Jonas Christofferson, “ECHR, --A Special Case of Treaty Interpretation?”

Ineke Boerefijn, “Reservations to Human Rights Treaties”

Christina Cerna, “The Right to Consular Notification as a Human Right”

Thilo Rensmann, “State Immunity and Human Rights”

Elena Sciso, “Article 103 of the UN Charter and Fundamental Human Rights

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before the community Judge”

Jan Wouters & Cedric Ryngaert, “The Impact of Human Rights and International Humanitarian Law on the Process of the Formation of Customary International Law”

Mahulena Hofmann, “The Relationship between General International Law and Human Rights Law in the Area of its Domestic Enforcement”

Riccardo Pisillo Mazzeschi, “Individual Rights and Human Rights: Their Impact on Diplomatic Protection”

Robert McCorquodale, “State Responsibility and Human Rights”

Menno Kamminga, “The Impact of International Human Rights Law on General International Law”

Oxford University Press is interested in publishing the book and negotiations have been carried out by Martin Scheinin and Menno Kamminga, the President

and Rapporteur of the Committee, respectively. The idea is that the book would be published before the Brazil Conference in August 2008 so that it would be available there, but of course, that depends on the timely submission of all the chapters.

**REPORT OF THE LAW OF THE SEA COMMITTEE**

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