

# ABILA Newsletter

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SEPTEMBER 2002

## INTERNATIONAL LAW WEEKEND

"The Challenge of September 11: International Law and The Control of Violence" is the theme of International Law Weekend, October 24-26, at the House of the Association of the Bar of the City of New York (42 West 44<sup>th</sup> Street).

The Weekend, which features 26 panels, will start at 4:30 p.m. on Thursday, October 24. As usual, the principal papers will be published in the International Practitioners Notebook, which will be distributed free of charge to all ABILA members. Dinner and luncheon talks will be published in the Proceedings of the American Branch.

**Ambassador Richard S. Williamson, U.S. Representative to the United Nations for Special Political Affairs**, will speak at the annual dinner on Friday, October 25, 2002. His theme will be "Transitional Justice." This special evening will begin with a reception at 6:30 p.m., followed by dinner, in the Princeton Club of New York at 15 West 43<sup>rd</sup> Street. **The Honorable William Howard Taft IV, Legal Adviser to the Department of State**, will address participants during the annual luncheon, Saturday, October 26, at the meeting venue. He will discuss significant implications today of terrorism and other forms of violence.

International Law Weekend is free to all ABILA members, students and members of co-sponsoring organizations. For others there is a fee of \$35. Pre-registration is not required, but reservations for the annual dinner and luncheon must be made and paid for in advance. All members will receive details and a printed program within a few weeks. You may also want to view the ABILA website ([www.ila.ambranch.org](http://www.ila.ambranch.org)).

Co-sponsoring organizations are the Association of the Bar of the City of New York-International Trade Committee, American Society of International Law, American Foreign Law Association, American Bar Association-International Law and Practice Section, New York County Lawyers' Association-Committee on Foreign and International Law, International Law Students Association, and ILSA Journal of International and Comparative Law.

The panels, in alphabetical order, include:

1. "Hybrid International-Domestic Tribunals"--Moderator: Laura Dickinson, University of Connecticut School of Law.
2. "International Debt Restructurings in the Emerging Markets"--Moderator: Steven T. Kargman, Counsel, U.S. Export-Import Bank.
3. "International Governance of Territory"--Moderator: Gregory H. Fox, Wayne State University Law School.
4. "International Law and the Global HIV/AIDS Crisis"--Moderator: Kyeng Lee, United Nations.
5. "International Law and Intelligence Operations"--Moderator: Mark Zaid, Esq., Krieger & Zaid, Washington, D.C.
6. "International Trade and Development"--Moderator: Sara Dillon, Suffolk University Law School.
7. "Issues in Teaching International Law"--Moderator: Howard S. Schiffman, New York University School of Continuing and Professional Studies.
8. "Justice Initiatives for Enforcing Women's International Human Rights"--Moderator: Jacqueline Bhabha, Harvard University.
9. "Lawyers in the Effort to Control Violence and Ease Civil Strife: International Field Work Promoting Rule of Law, Peaceful Conflict Resolution and Human Rights."--Moderator: Christina M. Storm, Esq., Director, Lawyers Without Borders, Inc. (USA).
10. "Preemptive Strikes and the War on Terrorism: Implications for World Order" -- Moderator: Arthur C. Helton, Esq., Council on Foreign Relations.
11. "Preventing Terrorism: Is it Compatible with Human Rights?"--Moderator: Jennfier Trahan, Counsel, International Justice Program, Human Rights Watch.
12. "September 11 and the War on Terrorism"--Moderator: Susan Tiefenbrun, Thomas Jefferson Law School.
13. "Social Accountability in International Business"--Moderator: Patrick C. Reed, Esq., Chair, International Trade Committee, Association of the Bar of the City of New York.

14. "The Canada --US Softwood Lumber Dispute"-- Moderator: Milos Barutciski, Esq., Davies Ward Phillips & Vineberg LLP, Toronto, Canada.
15. "The Decision of the International Court of Justice in The Democratic Republic of Congo v. Belgium (February 2002) "--Moderator: Malvina Halberstam, Benjamin N. Cardozo School of Law.
16. "The European Union: Challenges and Risks of Growth"-- Moderator: Richard Lutringer, Esq., New York Bar.
17. "The Faultlines of Legitimacy in International Law"--Moderator: Jean-Marc Coicaud, United Nations University, Tokyo.
18. "The Holocaust as a Catalyst for International Justice" --Moderator: Keith D. Nunes, Touro Law Center.
19. "The International Criminal Court: The Way Ahead"--Moderator: Leila Sadat, Washington University.
20. "The Potential Liability of Major Greenhouse Gas Emitting Nations for Damages Associated with Climate Change"--Moderator: William C.G. Burns, Editor-in-Chief, Journal of International Wildlife Law & Policy.
21. "The Role of the United Nations in Maintaining International Peace and Security in the 21st Century"--Moderator: Larry D. Johnson, New England School of Law.
22. "The Taliban's Other Crimes"--Moderator: Mark A. Drumbl, Washington and Lee University School of Law.
23. "The Trial of Slobodan Milosevic"--Moderator: Kelly Dawn Askin, Kennedy School of Government, Harvard University.
24. "Trade and Human Rights"--Moderator: Ved P. Nanda, University of Denver College of Law.
25. "Urban Warfare and the Laws of Armed Conflict: On Whose Hands is the Blood of the Innocent?"--Moderator: Andru Wall, Judge Advocate General's Corps, US Navy, and US Naval War College.
26. "USA PATRIOT Act: Money Laundering Enforcement and Compliance"--Moderator: Nicole M. Healy, Esq., Wilson Sonsini et al., Palo Alto, California.

Professor John F. Murphy of Villanova School of Law is Chair of the Weekend. He can be reached at [murphy@law.villanova.edu](mailto:murphy@law.villanova.edu).

## NOMINATIONS

The ABILA's nominating committee proposes the following candidates for election October 25, 2002: *President*, **James A.R. Nafziger** (second term); *President-Elect*, **Charles Siegal** (currently a Vice President); *Vice Presidents and Honorary Vice Presidents*, all incumbents plus **Peter Winship\*** to fill the vacancy left by Charles Siegal; *Honorary Secretary*, **Carlos Pelayo** (full two-year term); *Honorary Treasurer*, **Michael Gruson** (additional term); *Members of the Executive Committee*, all incumbents plus **Christina Cerna\*\*** and **Jeffrey Atik.\*\*\***

\* Professor Winship, of the Southern Methodist University School of Law, serves as Vice-Chair of the ABILA's Committee on International Commercial Law and as a member of the ABILA Executive Committee. The author of numerous publications, including a text on international sales law, Professor Winship has been a member of the Advisory Committee on Private International Law of the Department of State since 1990.

\*\* Ms. Cerna is Principal Human Rights Specialist of the Inter-American Commission on Human Rights (OAS). She was a member of the ABILA delegation to the ILA's Biennial Conference in New Delhi and has been nominated to be a member of the ILA Committee on Human Rights.

\*\*\* Professor Atik, of the Loyola School of Law in Los Angeles, has served on the planning committee for International Law Weekend--West and currently is Co-Chair of the International Legal Education Committee of the American Bar Association. He is a NAFTA Chapter 19 panelist and writes on international trade and investment issues, having served as General Counsel of the Massachusetts Office of International Trade.

Members of the Nominating Committee are Cynthia Lichtenstein (Chair), Ved Nanda, Leila Sadat and Robert von Mehren.

## INTERNATIONAL LAW WEEKEND-WEST

The ABILA's second International Law Weekend-West will take place February 7-8, 2003 at the Loyola Law School in Los Angeles. Professors William Aceves, of the California Western School of Law, and Larry Helfer, of the Loyola Law School, are co-chairs. Further details will be sent to all members this fall.

## BOOK REVIEW

**SCEPTICAL ESSAYS ON HUMAN RIGHTS.** Edited by Tom Campbell, K.D. Ewing, and Adam Tomkins. Oxford: Oxford UP, 2001. xxxv, 423 pp. Soft cover.

Reviewed by Edward Gordon\*

By virtue of the (U.K.) Human Rights Act of 1998, Britain has incorporated most of the substantive provisions of the European Convention on Human Rights into its domestic law. One consequence is to shift primary responsibility for the articulation of these rights from the political processes of representative government to the judiciary. Essays presented here by twenty-one mostly British and Commonwealth scholars express reservations about the wisdom of what is viewed as a significant transformation in democratic governance.

The essays are grouped into three sections. The first deals directly with the reallocation of governmental prerogatives. A featured essay argues, for example, "that by reducing citizens to empty rights-holders we fail to give adequate weight in our polity to the democratic values of participation, engagement, transparency and belonging, alienating the governed and diluting the richness of the relationship between government and people to one of little more than plaintiff versus defendant" (Richard Bellamy, as paraphrased by co-editor Adam Tomkins at page 5). A related concern, one characteristic of traditional common law thinking, is that the statute is likely to permanently entrench what may turn out to have been merely transient trends in contemporary western constitutionalism.

A second section, directed more specifically than the others to lawyers and legal scholars, consists in case studies identifying areas of law – e.g., labor law, torts, criminal practice – as to which the Human Rights Act ironically may produce regressive tendencies. The final section offers case studies of another sort, seeking to draw lessons from experiences other democracies have had with judicial enforcement of human rights norms. Here the concerns are mostly with asymmetry among rights enumerated and omitted; undemocratic demographic patterns in national judiciaries; and whether, empirically, judicial institutions do a better job than political ones in promoting respect for human rights.

Mark Tushnet (Georgetown), the only American scholar represented in this collection, warns against exaggerating the extent to which our national experience can contribute to a general understanding of the justiciability of a bill of rights. Not only is our experience ambiguous, he writes, but it has evolved over two hundred years, and in an institutional framework unlikely to replicate itself readily elsewhere.

Judy Fudge (Osgoode Hall), the sole Canadian contributor, notes that when the Canadian Charter of Rights and Freedoms was adopted, in 1982, criticism of it was confined mostly to the left in law schools. Since then, she says, debate has become increasingly polarized, and dissatisfaction with its impact on Canadian political parties and constitutional arrangements has spread beyond academic journals and across the political spectrum. Professor Fudge looks at the types of rights claims asserted by progressive social movements, how the Supreme Court of Canada has dealt with these claims, and political reaction to its decisions. She uses decisions affecting freedom of expression to illustrate salient features of the dominant rights discourse.

Reviewers' platitudes aside, a brief comment or two may be of interest. First, as to the writing itself, full marks are due the co-editors, and OUP, for according a unity of style to writing that emanates, after all, from a variety of academic disciplines and individual tastes. The result is an elegance and continuity not often found in interdisciplinary collections. Second, impishly, I am drawn to the inference that this felicity may owe something to the fact that, so far as I can tell (with a little help from Google), none of the contributors identifies international law as his/her principal academic discipline.

*\*Editor's Note:* Edward Gordon is an Honorary Vice President and former President of the ABILA. This is the first book review to be published in the ABILA Newsletter under a new arrangement between the ABILA and the Oxford University Press (see "Book Review Opportunity" next in this issue).

## BOOK REVIEW OPPORTUNITY

Oxford University Press has offered to provide free evaluation copies of its new international law books to any ABILA members who prepare short book reviews for publication in the Newsletter. The Executive Committee decided to explore this offer as a pilot program to determine the level of member interest and the feasibility of printing a limited number of book reviews. Book reviews are limited to 500 words in length.

Members interested in this pilot program should review the list of recently published international law titles on Oxford University Press's web site at <http://www.oup.co.uk/law/>. Members may also receive details of new Oxford University Press law books in their chosen area of interest on a monthly basis by signing up at <http://www.oup.co.uk/law/services/email-news>. Thereafter, contact Executive Committee member Peter Oppenheimer ([poppenheimer@yahoo.com](mailto:poppenheimer@yahoo.com)). Mr. Oppenheimer serves as the ABILA contact with Oxford University Press in overseeing the pilot book review program.

## CONFERENCE IN SAN DIEGO

The ABILA is co-sponsoring a Rule of Law Conference at the California Western School of Law in San Diego, November 14-16, 2002. The theme of the conference is "Creating an Effective Legal Environment for the Global Economy." Conference information and registration is available at [www.cwsl.edu/RuleofLaw](http://www.cwsl.edu/RuleofLaw). You may also contact Karen Miller of California Western School of Law at 619-525-1691 or [kmiller@cwsl.edu](mailto:kmiller@cwsl.edu).

## BIENNIAL CONFERENCE IN NEW DELHI

For most of us in the American Branch delegation, the Biennial Conference in New Delhi April 1-6 was hard to get to but also hard to forget. The facilities for the 2002 Conference, administrative arrangements on the spot, and local hospitality were all superb. Several members of the American Branch commented that the committee and plenary sessions were particularly constructive at this conference. Beyond the conference hall, three U.S. Embassy officers gave the American Branch delegation an informative briefing on India and U.S.-India relations. The day after the conference attendees were treated to a day's excursion to Agra for visits at the Taj Mahal and Agra Fort. It was a very full week.

## AMERICAN BRANCH PROCEEDINGS

The 2001-2002 American Branch Proceedings have been mailed to all 2001 Branch members. The Proceedings contain information on the 2000 and 2001 International Law Weekends together with the text of the principal addresses delivered at each of the Weekends. The 2000 addresses were "A Pope, Two Presidents and a Prime Minister" by Ivan Shearer, and "International Law in United States Courts" by Arthur Rovine. The 2001 addresses were "Reflections on International Adjudication" by Judge Stephen Schwebel, and "An International Constitutional Moment" by Anne-Marie Slaughter. The Proceedings include information about American Branch committees and reports from the Committee on Refugees, the Committee on the Teaching of International Law, the Economic Sanctions Committee, the Environmental Law Committee, the Extradition and Human Rights Committee, the Human Rights Committee, the Law of the Sea Committee, and the Space Law Committee. The 2001-2002 Proceedings also contain information about the American Branch, including the current versions of the Branch's constitution and by-laws and the ILA's constitution. Please direct questions and suggestions for the next issue of the Proceedings to the Editor, John Noyes, California Western School of Law, 225 Cedar Street, San Diego, CA 92101.

## ABILA WEB SITE

The International Law Association's web site is located at [www.AmBranch.org](http://www.AmBranch.org). It contains up-to-date information about ABILA activities and structure of the organization, including committees, committee chairs and their reports. Information about International Law Weekend and International Law Weekend-West is posted as it becomes available. Our Webmaster, Houston Putnam Lowry of the Connecticut Bar, reports that the site receives nearly a thousand hits in the weeks surrounding International Law Weekend. Sometimes the web site is updated more than once a day to keep up with changes.

The membership database is now centralized on the web. This means officers have access to the membership list 24 hours a day and 7 days a week, wherever they are located. A membership record contains each member's contact information as well as any committee membership. Shortly a new option will be added to allow officers and committee chairs to download mailing labels. Plans are also underway to enable members to renew their memberships on line, thereby cutting down on mailing lists and the costs of handling checks.

Also, each committee has a listserver, which can be reached by its name and which the committees can use in any way they want. For example, the [Commercial@ambranch.org](mailto:Commercial@ambranch.org) listserver contains the email lists of all members of the commercial law committee. To avoid SPAM, only members of the committee can post information.

The objective is to have the technology serve the membership and facilitate what we want to do. Our webmaster, Houston Putnam Lowry, who welcomes your suggestions, can be reached as follows:

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Phone: (203) 235-1651  
Fax: (203) 235-9600  
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## WELCOME, MICHELE VALENTIN!

The American Branch is pleased to welcome Michele Valentin as the new assistant to Honorary Secretary Carlos Pelayo. When not immersing herself in her many responsibilities related to the ABILA, Michele is an Administrative Assistant in the Litigation Department of Davis Polk & Wardwell, where she has worked since August 2000.

## DUES FOR 2002

Please check your records to make sure you have paid your annual dues for 2002. For those of you who have not done so, please send your check for Regular (\$60), Sustaining (\$100) or Institutional (\$80) Membership, payable to the American Branch, ILA, c/o our Honorary Treasurer: Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022.

## FREE MEMBERSHIP

The American Branch has relied heavily on word of mouth to recruit new ILA members. Many, if not most of us, joined the organization on the recommendation of active members. The ABILA will offer a free membership for 2003 to the member who recruits the most new paid members during 2002. All you have to do to compete for the free membership is to report the names of the new paid members whom you have recruited. Please send this information no later than January 15, 2003 to Michele Valentin at Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017-3911.

## DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW

The International Law Institute is pleased to announce the return to annual publication of the Department of State's *Digest of United States Practice in International Law*. Known informally to recent generations of practitioners and scholars as the Whiteman Digest, the work has been recognized as one of the most important publications in the international law community. The *Digest* ceased annual publication in 1980 although some collective volumes covering the 1980s have been published.

The first volume in this new series covers the calendar year 2001 in 832 pages. The sales price is \$80. As in the past, each annual volume is prepared by the Office of the Legal Adviser of the Department of State and covers important developments in all areas of public and private international law. A volume covering 1989-1990 will also be published this year. Following that, the Legal Adviser's Office and the Institute will develop plans to cover the 1990s and future years.

For orders or further information, please contact the Publishing Office, International Law Institute, 1615 New Hampshire Avenue NW, Washington, DC 20009. Telephone: 202-482-3036 Fax: 202-483-3029 E-mail: [pub@ili.org](mailto:pub@ili.org).

## CANADA CORNER

The ILA Canadian Branch, in conjunction with the Harvard Business School Club of Toronto, hosted the Hon. Christine Todd Whitman, Administrator of the United States Environmental Protection Agency and former Governor of New Jersey. The presentation was held at the King Edward Hotel in Toronto and included lunch. The topic presented was "US Environmental and Business Aims." A lively debate ensued in the question-and-answer period. Gov. Whitman was introduced by ILA Canadian President, Harry J.F. Bloomfield, Q.C. and thanked by Harvard Club President Erich Almasy. A reception was arranged by Barry Leon. The meeting, which 200 lawyers and business people attended, was a great success.

On September 4, 2002, the Canadian Branch hosted a speaker-luncheon in Montreal at the private Mount Royal Club. The speaker was Dr. Sherry Cooper, Executive Vice President of the Bank of Montreal companies. Her presentation was entitled "Economic Recovery - The Sweet Spot for Canada."

A Canadian panel is being prepared by Milos Barutciski of the Canadian Branch for the International Law Weekend in New York this October. Canadian members are being encouraged to participate in the ILW (see further information at the beginning of this issue of the Newsletter).

The Right Hon. The Lord Slynn of Hadley will visit Ottawa, Montreal, Toronto and Vancouver this November. Details of his visit and speaking engagements will be available at International Law Weekend. The Canadian Branch invites Canadian and American members of the ILA to attend one of Lord Slynn's illustrious presentations.

The Canadian Branch is also arranging a visit by Harish Salve, the Attorney General for India, to Toronto at the end of October. Mr. Salve was instrumental in the success of the New Delhi conference this past April. American members of the ILA are invited to attend what will be a memorable presentation.

At [www.ila-canad.ca](http://www.ila-canad.ca), is information about these upcoming events in addition to a large number of links relevant to an international lawyer. Please address any comments to David A Johnson, Executive Director, at [ila@fieldbloom.com](mailto:ila@fieldbloom.com) or (514) 871-9571.

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As September 11 draws near, Canadian Branch members will be thinking of American Branch members.

## **ABILA COMMITTEES**

The Director of Studies, Charles D. Siegal, is in the process of confirming his records about ABILA committees, their chairs, and ABILA membership on ILA committees at the international level. Please notify him of any discrepancies in the information that follows. Mr. Siegal's address is Charles D. Siegal, Esq., Munger Tolles & Olson, 35<sup>th</sup> Fl., 355 South Grand Avenue, Los Angeles, CA 90071-1560, SiegalCE@mto.com.

### **ARMS CONTROL AND DISARMAMENT**

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### **ENVIRONMENTAL LAW**

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### **EXTRADITION AND HUMAN RIGHTS**

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### **EXTRATERRITORIAL JURISDICTION**

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### **HUMAN RIGHTS**

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## **INTELLECTUAL PROPERTY**

Chair: Professor Karl F. Jorda  
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## **INTERNATIONAL COMMERCIAL LAW**

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## **INTERNATIONAL CRIMINAL COURT**

Chair: Professor Leila Nadya Sadat  
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## **INTERNATIONAL DISPUTE RESOLUTION**

Co-Chairs: Professor David S. Clark  
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## **INTERNATIONAL TRADE LAW**

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## ISLAMIC LAW

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## LAW OF THE SEA

Chair: Professor George K. Walker  
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## LEGAL ASPECTS OF INTER-COUNTRY ADOPTION AND PROTECTION OF THE FAMILY

Chair: Professor Gail McKnight Beckman  
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## SPACE LAW

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## TEACHING INTERNATIONAL LAW

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## **ABILA Membership on ILA Committees / Study Groups**

Arms Control and Disarmament Law:  
*Thomas Graham, George Walker*

Cultural Heritage Law:  
*James A.R. Nafziger, Chair*

Diplomatic Protection of Persons & Property:  
*Richard Bilder (Chair), David Caron,  
David Bederman*

Feminism and International Law :  
*Virginia Leary*

International Family Law:  
*Gail McK. Beckman*

International Civil and Commercial Litigation:  
*Peter Trooboff*

International Commercial Arbitration:  
*Philip D. O'Neill, Charles N. Brower,  
Michael F. Hoellering, David W. Rivkin*

International Criminal Court:  
*Leila Nadya Sadat, Michael Scharf*

International Human Rights Law and Practice:  
*William Aceves, Christina Cerna, Charles D. Siegal*

International Monetary Law:  
*Cynthia Lichtenstein, Michael Gruson,  
A.W.G. Newburg, Ernest Patrikis, Thomas Baxter*

International Securities Regulation:  
*Edward H. Fleishman (Chair), Barbara J. Green,  
Roberta Karmel, Cynthia Lichtenstein*

International Trade Law:  
*Frederick M. Abbott (Rapporteur), John Jackson  
Gary N. Horlick, Alan Swan, Joel Trachtman (Alt)*

Legal Aspects of Sustainable Development:  
*David Leebron, Oscar Schachter*

Legal Issues of the Outer Continental Shelf:  
*John Noyes*

Refugee Procedures:  
*Ved Nanda, Stephen Legomsky*

Regional Economic Development Law:  
*Eric Stein, Fred Abbott*

Space Law:  
*Carl Q. Christol, Edward R. Finch (Alternate)*

Teaching of International Law:  
*Valerie Epps, John King Gamble (Rapporteur),  
Charlotte Ku, Michael Scharf,*

Transnational Enforcement of Environmental Law:  
*Guenther Handl, Edith Brown Weiss, David Bederman*

Water Resources Law:  
*J. Dellapenna (Co-Rapporteur)*

ILA Study Group on State Responsibility:  
*David Caron*