

ABILA Newsletter

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INTERNATIONAL LAW WEEKEND: OCTOBER 23-25, 2003

The ABILA's next International Law Weekend will take place October 23-25, 2003 at the Association of the Bar of the City of New York. Professor Peter Winship of Southern Methodist University School of Law is Chair of the Weekend. Any member who would like to propose a panel for International Law Weekend 2003 should send the proposed topic to Professor Winship at: pwinship@mail.smu.edu. He can also be reached by contacting Michelle Oswald at 214-768-2832.

The ILSA Journal of International and Comparative Law, of the Nova Southeastern University Law Center, will publish papers presented at the Weekend.

2002 INTERNATIONAL LAW WEEKEND and ELECTION OF OFFICERS

A successful International Law Weekend, October 24-26, 2002 in New York, focused on the theme, "The Challenge of September 11: International Law and The Control of Violence." The meeting featured 26 panels and timely talks by The Honorable William Howard Taft IV, Legal Adviser to the Department of State, and Nicholas Rostow, General Counsel, U.S. Mission to the United Nations.

John Murphy chaired the Weekend. Highlights of the Executive Committee and Annual Business Meetings included a discussion about the ABILA's recent membership growth and the election of officers. As a result of substantial solicitation efforts during 2002, the ABILA's paid membership increased substantially in all categories. The Regular Membership category, which is the core of the ABILA, increased by 48%. Efforts are underway to encourage greater student membership in cooperation with the Association of Student International Law Societies.

The following officers were reelected or newly elected to their positions (*) during the annual meeting:

Chair, Executive Committee:

Alfred P. Rubin

President:

James A.R. Nafziger

President-Elect:

Charles D. Siegal (California Bar)*

Vice Presidents:

Peter Winship (Southern Methodist University),*
Valerie Epps, John F. Murphy, John E. Noyes,
Ruth Wedgwood

Honorary Vice Presidents:

Charles N. Brower, Nicholas R. Doman, Thomas
M. Franck, Theodore R. Giuttari, Edward Gordon,
Louis Henkin, P. Nicholas Kourides, Luke T. Lee,
Cynthia C. Lichtenstein, Ved Nanda, Cecil J.
Olmstead, Oscar Schachter, Louis B. Sohn,
Robert B. von Mehren

Honorary Secretary:

Carlos Pelayo

Honorary Treasurer:

Michael Gruson

Members, Executive Committee:

William Aceves, Kelly Dawn Askin, Jeffery Atik
(Loyola-Los Angeles Law School),* Gail McK.
Beckman, David J. Bederman, Christina Cerna
(Inter-American Commission on Human Rights),*
Malvina Halberstam, Gary N. Horlick, Scott
Horton, Karen Hudes, Philip Moremen, Peter
Oppenheimer, Alison Renteln, Leila Nadya Sadat,
Jan Schneider, Michael P. Scharf, Joel P.
Trachtman, George K. Walker, Mark S. Zaid.

In addition, the ABILA has three new committee chairs. Leila Sadat and Michael Scharf are the new Co-Directors of Studies, and Peter Winship is Chair of the Planning Committee for International Law Weekend 2003. Ruth Wedgwood will continue to serve as New York and Washington-Area Liaison; John Noyes as Editor-In-Chief of the Proceedings; and Houston Putnam Lowry as Webmaster.

INTERNATIONAL LAW WEEKEND – WEST, FEBRUARY 7-8, 2003

As this Newsletter goes to press, the second biennial International Law Weekend – West is about to take place. The dates are February 7-8, 2003 and the conference site will be the Loyola Law School, 919 S. Albany St., Los Angeles.

The conference brings together legal practitioners and academics to discuss cutting-edge issues in public and private international law. Panels will address a wide range of issues, emphasizing the impact of globalization on the practice of law. Selected papers will be published in a forthcoming issue of the *Loyola International Law Review*.

Topics include 9/11 and its Aftermath, Positivism versus Natural Law – The Jurisprudence of International Law, Perspectives on U.S. Unilateralism, Unlawful Combatants, International Copyright and Entertainment Law, Legality of the Use of Force, Structuring Cross-Border Transfers of Intellectual Property, Death Penalty Litigation and the Use of International Law to Interpret the Constitution, Extraterritoriality and the Criminal Law: Terrorism and Other Contemporary Challenges, Immigration Law: Planning Global Employment Assignments after 9/11, Sustainable Development After Earth Summit 2002, Current Developments in Alien Tort Claims Act Litigation, and NAFTA and the Takings Clause.

The keynote speaker at a dinner February 7 in the Loyola Law School will be David J. Scheffer, Senior Vice President of the United Nations Association – USA and former U.S. Ambassador-at-Large for War Crimes.

International Law Weekend-West is free and open to the public. There is a \$30 charge for the Friday evening dinner and keynote address. Eight hours of MCLE credit are also available to California attorneys for \$200 (\$100 for non-profit public interest organizations). Registration in advance for the dinner and MCLE credit is required (Email: bridget.klink@lls.edu; phone: 213-736-1407; Fax: 213-381-6783.)

The members of the organizing committee for the ABILA Weekend – West are: William Aceves and Larry Helfer (co-chairs), Roger Alford, Jeffery Atik, Greg Fox, Alan Kindred, Hari Osofsky, Kanika Radhakrishnan, Charles Siegal, and Beth Van Schaack.

CARIBBEAN REGIONAL CONFERENCE: MARCH 26-29, 2003

Members of the American Branch are invited to attend the first Caribbean Regional Conference of the International Law Association, on March 26-29, 2003, in Bridgetown, Barbados. All conference information, hotel and conference registration forms and some travel discounts are available at: <http://law.uwichill.edu.bb/2003ILA/intro.htm>. The Conference Coordinator is Dr. David S. Berry, Faculty of Law, University of the West Indies, Cave Hill Campus, P.O. Box 64, Bridgetown, Barbados. (tel: 246-417-4243; Fax: 246-424-1788; Email: David.Berry@uwichill.edu.bb).

DUES AND GIFTS FOR 2003

It is membership renewal time! ABILA dues are \$75 per year for Regular Members, \$200 for Sustaining Members and \$80 per year for Institutional Members. International Law Weekend and International Law Weekend–West remain free to all members.

Our endowment and occasional gifts enable us to stay in the black. Because of our ongoing need for gifts, we would be most grateful for your generosity again this year.

Checks for Regular, Sustaining or Institutional Memberships and gifts to the Branch should be made payable to the *American Branch ILA* and sent to our Honorary Treasurer: Michael Gruson, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022.

BOOK REVIEW

Christoph J.M. Safferling. *TOWARDS AN INTERNATIONAL CRIMINAL PROCEDURE*. Oxford: Oxford UP 2001, xvii, 395 pp. Hard cover.

Reviewed by David P. Stewart *

The continuing debate over the International Criminal Court has thus far centered on structural and jurisdictional issues. Largely overlooked is the critical subject of procedure. Prof. Christoph Safferling of the Law Faculty of the University of Hannover addresses this gap with a timely and probing analysis of international prosecutorial mechanisms represented by the ICC and its predecessors, the *ad hoc* tribunals for the Former

Yugoslavia and for Rwanda. His point of departure is that the criminal process must be consistent with, and serve to promote, universally accepted norms of human rights if it is to provide a fair trial.

Safferling focuses on the procedural problems confronting international criminal prosecutions. Separate chapters investigate practical and theoretical issues related to the pretrial investigative stage, judicial confirmation of the indictment, the trial and sentencing, the post-conviction phase including double jeopardy and appeal, and other post-trial matters including incarceration, pardon and parole.

Acknowledging the differences between the Anglo-American "accusatorial" and Continental European "inquisitorial" systems, the author aims to develop "elements of an inclusive procedural structure" based on universally accepted human rights norms. He refers frequently to decisions of the European Court of Human Rights and the Human Rights Committee established under the International Covenant on Civil and Political Rights.

Many of the book's conclusions will seem unremarkable to "common" and "civil" lawyers alike. Safferling advocates separation of prosecutor and court, both shielded from political interference; pretrial disclosure of prosecutorial evidence; a public and speedy trial at which the defendant has a right to be present; oral proceedings with presence of witnesses; and a separate sentencing phase following conviction.

More than once, however, the analysis leans consciously towards the continental approach. Safferling is no fan of pretrial detention and faults the tribunals for the Former Yugoslavia as unduly restrictive in this regard (strangely, he makes no mention of the major provisional detention case, Barayagwiza, of the tribunal for Rwanda). He dislikes prosecutorial discretion as practiced in the common law and recommends eliminating plea bargaining. He is almost hostile to the jury system, describing it as "questionable in general, and certainly neither affordable nor desirable in the international context" (p. 371). He has serious reservations about the practice of cross-examination and would limit the exclusionary rule to apply only to evidence obtained in violation of human rights. He inclines in favor of trials in absentia when necessary in the interests of justice.

Overall, the analysis places great trust in the ability of international prosecutors to guide investigations and prosecutions apolitically. It assumes international judges will invariably seek only the truth. By

comparison, domestic legal institutions are suspect because they necessarily reflect political and historical biases. Still, the author says that the ICC "should be operated by strict adherence to the principle of complementary jurisdiction" (p. 368) because otherwise States will not accept its jurisdiction. The book makes an important contribution to a rapidly developing field. It is highly recommended for scholars and practitioners alike.

* Adjunct Professor
Georgetown University Law Center

BOOK REVIEW OPPORTUNITY

Members interested in writing a book review for the Newsletter in the ABILA's new program with the Oxford University Press should review the list of recently published international law titles at <http://www.oup.co.uk/law/services/email-news>. Thereafter, contact Executive Committee member Peter Oppenheimer (poppenheimer@yahoo.com). Mr. Oppenheimer serves as the ABILA contact with Oxford University Press in overseeing the pilot book review program.

LEGAL DEVELOPMENTS: THE LONDON DECLARATION ON INTERNALLY DISPLACED PERSONS

The ILA adopted a Declaration of International Law Principles on Internally Displaced Persons at its London Conference in July 2000.* The London Declaration culminated several years of work by the ILA's Committee on Internally Displaced Persons, chaired by Luke Lee, Honorary Vice President of the American Branch. As Dr. Lee has written, the Principles of the Declaration, if they are to be codified into a multilateral convention and effectively implemented, must be given the widest possible dissemination. This effort currently engages former officers and members of the Committee in two kinds of projects: publication of the texts and salient features of the Principles in various journals, and promotion of the Principles in conferences and symposiums.

The texts of the Principles and commentaries have been published during the past two years in such journals as the *AMERICAN JOURNAL OF INTERNATIONAL LAW* (vol. 13, 2001, at 363), and the *JOURNAL OF REFUGEE STUDIES* (vol. 14, No. 1, 2001, at 70). Also, several important conferences have been held to highlight not only the general legal aspects of

internally displaced persons (IDPs) but also specific problems in such countries as Sudan and Colombia. Of particular interest was a Roundtable on Internal Displacement held at Chicago-Kent College of Law on March 26, 2002.

Dean Henry H. Perritt's opening address at the Chicago-Kent Conference set the tone and parameters for the first meeting of lawyers in the U.S. devoted exclusively to the subject of IDPs. He began by providing an overview of the IDP situation in the world, contrasting an estimated 14 million refugees and asylum-seekers to more than 21 million IDPs. Dean Perritt emphasized the growing recognition that refugees and IDPs represent an important threat to international peace and security in the twenty-first century. He drew attention to the evolving concepts of sovereignty from a purely State-based international law into a richer system balancing the rights of individuals and those of States. Benefitting from his first-hand experience in Bosnia and Kosovo, Dean Perritt distinguished refugee flows, which are caused legally by persecution, from IDP flows, whose causes are broader. He raised the question of the differences between soft law, to which Dr. Francis Deng's Guiding Principles of Internal Displacement belongs, and hard law, such as a proposed international convention on IDPs. He was quick to point out that from one perspective, however, all international law is somewhat soft because of the difficulty of enforcement.

Dean Perritt posed the question of whether the Guiding Principles should be turned into a treaty or convention addressing the rights of IDPs and the duties of their home States. Professor Doug Cassell of the Northwestern University School of Law and Dr. Lee debated the question.

Dean Perritt ended with a plea for developing a complete strategy that would include building the institutions of civil society in such places as Afghanistan, Kosovo, Palestine and Saudi Arabia. Only then, he suggested, will the likelihood of ethnic cleansing that produces the IDPs and failed societies that breed terrorism be reduced.

Other papers presented at the Roundtable include those by Dr. Marc Sommers of Boston University's African Studies Center ("Overview and Magnitude of the Problem of Displaced People"), Professor Cassell ("Enhancing Human Rights and Legal Protection"), Professor Bertram Brown of Chicago-Kent School of Law ("Reconciling State Sovereignty and Protections for the Internally Displaced"), and Dr. Lee ("The Case for an International Convention on Displaced People").

The full texts of the Roundtable presentations, along with short summaries of discussion and panel interactions, will be published by Pax International in early 2003 under the title, *INVISIBLE "REFUGEES": INTERNALLY-DISPLACED PEOPLE AND THE NEW UNDERSTANDINGS OF PROTECTION AND SOVEREIGNTY*.

* See *ABILA Newsletter* (No. 60, February 2001, at 2).

THE ILA'S WORK ON THE LAW OF SUSTAINABLE DEVELOPMENT

At the World Summit on Sustainable Development in Johannesburg, August 29, 2002, Professor Nico Schrijver presented a keynote speech on behalf of the ILA's Committee on Sustainable Development. Professor Schrijver, of the Free University of Amsterdam, is Rapporteur of the Committee. What follows is an excerpt from his remarks in Johannesburg:

"The Seven Principles of the ILA New Delhi Declaration"

The ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development, as adopted by consensus at the ILA Conference in New Delhi, India, 6 April 2002 emphasizes that sustainable development is a matter of concern both to developing and industrialized countries. The association expresses its concern about growing inequalities between and within States as well as about the ability of many developing countries to participate in the global economy. The ILA also takes the view that the realization of the international bill of rights comprising economic, social and cultural rights, civil and political rights and peoples' rights, is central to the pursuance of sustainable development.

The body of the ILA Declaration consists of Seven Principles. We do not claim to be exhaustive, but have included those which, in our view, best reflect our work and concern. They include:

1. The duty of States to ensure sustainable use of natural resources.
2. The principle of equity and the eradication of poverty.
3. The principle of common but differentiated responsibilities.

4. The principle of the precautionary approach to human health, natural resources and ecosystems.
5. The principle of public participation and access to information and justice.
6. The principle of good governance.
7. The principle of integration and interrelationship, in particular in relation to human rights and social, economic and environmental objectives.

Naturally, these principles differ in various ways. Some are of a purely substantive nature, others of a more procedural nature. Some are firmly established principles, others are emerging principles. Yet, in combination they could form a solid framework on which the further development of international law relating to sustainable development can build.

....

The international community has made, through the Millennium Declaration of the United Nations, its Seven Pledges to ban poverty and provide an adequate living standard to all by 2015 as well as to leave behind a planet where also future generations can enjoy a fair level of the common patrimony. The ILA is deeply convinced that international law has a role to play in this respect, both as a value system and as a concrete regulatory framework for co-operation between all relevant actors. We sincerely hope that the ILA Seven Principles-Declaration can make a contribution towards this end and attract some attention of policy makers in Johannesburg and beyond.”

ILA FORUM

Volume 4, No. 4 of FORUM, the journal of the International Law Association, is now available in PDF format on the members-only area of the ILA website www.ila-hq.org. To assist you in accessing FORUM, click on: <http://www.ila-hq.org/members/FORUMvol4issue4.pdf>.

You will be asked for the ILA user name and password. Please note that only members and members of branches who have paid membership fees are eligible to receive the password for the restricted members area. If you have mislaid these details, please request ILS headquarters to resend details to you (natalie.pryer@ila-hq.org).

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:
David Caron, David Bederman
- Feminism and International Law:
Virginia Leary
- International Family Law:
Gail McK. Beckman
- International Commercial Arbitration:
*Philip D. O'Neill, Charles N. Brower,
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- 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),
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- Transnational Enforcement of Environmental Law:
*Guenther Handl, Edith Brown Weiss, David
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- Water Resources Law:
J. Dellapenna (Co-Rapporteur)
- ILA Study Group on State Responsibility:
David Caron