

ABILA Newsletter

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INTERNATIONAL LAW WEEKEND: October 14-16, 2004

International Law Weekend 2004 will take place October 14 - 16 at the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York, New York. The theme of this year's Weekend is "Worlds in Collision? International Law and National Realities." More than 40 panels will focus on the interface of international law and potentially conflicting national regimes and perceptions.

The opening panel will set the tone with a discussion of how international law can be used to interpret the basic legal instrument of the United States, the Constitution. Over the next two days, panels will consider such private and public international law issues as arbitrating investor-state disputes, formal dispute resolution models, NAFTA, the Iraq conflict, and such human rights issues as the internationalization of lesbian, gay and transgender rights. Panelists include teachers and scholars of international law, practicing attorneys, government experts, United Nations diplomats and employees of non-governmental organizations.

The Weekend will provide opportunities for participants to interact outside the sessions. On Thursday, October 14, a reception will precede the opening panel. The next evening, October 15, the Swiss Mission to the United Nations will generously host a reception.

The annual luncheon on Saturday, October 16, will feature an address by James Carter. Mr. Carter is President of the American Society for International Law and a partner at Sullivan & Cromwell LLC. The luncheon will also feature the presentation of the ABILA's first Distinguished Service Award to Professor Cecil Olmstead and remarks by the awardee.

The weekend is free to ABILA members, students and members of co-sponsoring organizations. The cost for others is \$50 for the Weekend. Co-sponsoring organizations and institutions include: Albany Law School, the American Foreign Law Association, the American Society of International Law, the International Affairs Council of the Association of the Bar of the City of New York, the Connecticut Bar Association, the Customs and International Trade Bar Association, the International Law Students Association, Lawyers Without

Borders, and the International Law and Practice Section of the New York State Bar Association.

The co-chairs of the Weekend organizing committee are Lorraine Brennan, Philip Moremen and Charles Siegal. Information and a registration form may be obtained at the American Branch website, <http://www.ambranch.org>.

ELECTION OF OFFICERS

The ABILA's nominating committee proposes the following candidates for election October 15, 2004:

Chairman of the Executive Committee:

James A.R. Nafziger (currently President)

President:

Charles Siegal (currently President-Elect)

Honorary Vice-Presidents:

John Murphy (currently Vice-President)

Alfred Rubin (currently Chairman)

New Members of the Executive Committee:

David P. Stewart and Susan Tiefenbrun

David P. Stewart is the Assistant Legal Adviser for Diplomatic Law and Litigation in the Office of the Legal Adviser of the U.S. Department of State. He earned degrees from Princeton University (B.A.), Yale (M.A., J.D.), and New York University (LL.M.). Before joining the Government, Mr. Stewart practiced law in New York City. He has been Adjunct Professor of Law at Georgetown University and also teaches human rights at the School of Advanced International Studies of Johns Hopkins University. He co-edits the *Digest of U.S. Practice in International Law* and is co-author of the current *Nutshell on International Human Rights* (3rd ed.).

Susan Tiefenbrun is Associate Professor of Law at the Thomas Jefferson School of Law, having received B.S. and M.A. degrees from the University of Wisconsin, a J.D. from New York University Law School, and a Ph.D. with distinction from Columbia University. In 2003 she was awarded the French Legion of Honor, France's highest distinction, by Presidential Decree. A frequent speaker and chair on ABILA panels, Professor Tiefenbrun has written extensively on joint venture laws, international intellectual property and piracy, the World Court, ad hoc courts, international human rights, and global sex trafficking.

INTERNATIONAL LAW WEEKEND – WEST: February 4-5, 2005

The third biennial International Law Weekend-West will be held February 4-5, 2005 at the Whittier Law School in Costa Mesa, California. The conference follows the first two, highly successful Weekends-West that were held at Pepperdine Law School (2001) and Loyola (Los Angeles) Law School (2003).

International Law Weekend-West 2005 will bring together law practitioners and academics to discuss a wide range of topics, emphasizing the impact of globalization on the practice of law. Topics to be addressed at the conference will include international environmental law, international business transactions, international criminal law, human rights law, and the laws of war. For additional information concerning International Law Weekend-West, please contact Hari Osofsky (osofsky@sbcglobal.net) or William Aceves (wja@cwsu.edu). At a later date, registration materials will be sent to ABILA members.

MEMBERSHIP

The ABILA's membership has more than doubled during the last four years. This welcome development has helped revitalize our organization, particularly our committees and International Law Weekends (East and West). Thanks are due to active recruitment of new members by the ABILA leadership and a high retention rate of existing members. Let's all help continue these efforts. For membership materials, please contact Eileen Ahearn (eahearn@dpw.com).

ILA CONFERENCE IN BERLIN

The 71st biennial conference of the ILA took place August 16-21, 2004 in Berlin. The conference attracted a large number of registrants, including some 35 from the American Branch.

Professor Karl-Heinz Böckstiegel, who was later elected ILA President, welcomed conferees on behalf of the German Branch. He emphasized the unique role of the ILA in meeting new changes and challenges of international terrorism, human rights violations, and economic globalization. Turning to the practical aspects of the conference, Professor Böckstiegel acknowledged with a smile that "nobody is perfect, not even Germans in organizing a conference." What became perfectly clear, however, was that the Berlin stage was admirably set to ensure a highly successful conference.

During the closing ceremony on August 21, ILA members adopted resolutions by three committees that had concluded their work. The Committee on the Accountability of International Organizations presented a set of Recommended Rules and Practices. These landmark provisions extend responsibility of international

organizations beyond provisions for liability. The Rules, together with the Committee's Report, will be transmitted to the Secretary-General of the United Nations and the executive heads of international organizations, including the international administrative tribunals.

The Committee on Water Resources presented a set of some 73 Rules on Water Resources that were then adopted at the plenary session. The rules are intended to update and expand the scope of the Helsinki Rules on shared drainage basins, which was also an ILA initiative, to include groundwater and other shared resources, as addressed by the 1997 United Nations Convention on the Law of the Non-Navigational Uses of Watercourses and other instruments.

Also concluding its work in Berlin was the Committee on Arms Control and Disarmament Law. Its final report culminates an active program for over a decade that has already contributed to a systematic evaluation of legal measures necessary to ensure the effective functioning of arms control and disarmament agreements. The Committee's 2004 report notes the need for further investigation and innovation relevant to legal regulation of armaments and disarmament, in particular with respect to general principles of international law as applicable to arms control and disarmament; legal responses to the continuing challenge of non-proliferation; international and national legal contributions to limit and restrict conventional weapons; the role of bilateral agreements; and the need to have due regard for legitimate concerns of third states.

A fourth committee, on international human rights law and practice, will continue its work but submitted a final Report on the domestic implementation of findings by human rights treaty bodies. The report, which is the first comparative study on the subject, provides judges, legal practitioners and policymakers with valuable information on how national courts and tribunals draw upon the jurisprudence of treaty bodies.

Other highlights of the Conference included a day-long program on international commercial arbitration. The Committee on Compensation for Victims of War conducted a workshop to launch an ambitious project of preparing draft principles. The Committee on Cultural Heritage Law similarly convened a lively open session to help shape its new project on collaboration in protecting and transferring cultural material.

All registrants were treated to a full-day excursion to Potsdam and a cruise on the beautiful Havel River and Wannsee. Other social events included receptions hosted by the German Foreign Ministry and the City of Berlin. The United States Embassy hosted American Branch registrants at a briefing session on

German affairs and German-United States relations. Six diplomats made presentations and responded to questions.

At the closing session, members approved two amendments to the ILA Constitution that had been initiated in part by the American Branch. These amendments, respectively, clarify and sharpen the document's "main object" clause and restrict the terms of ILA office to three four-year terms.

ON EXTRATERRITORIALITY OF EU ANTITRUST LAW

A recurring issue at several sessions of the ILA Conference in Berlin was the extraterritoriality of United States and European legislation. Interpretations of European Union antitrust law, in particular, were varied and sometimes conflicting. The following summary of this law and several well-known cases under it is taken from Martha Neil, *Old Continent, New Deal*, ABA J., Sept. 2004, at 50, 54 (drawing on remarks by T. Andrew Ragusin):

"Even when a merger involves only U.S. companies, EU antitrust law can be implicated if the companies have significant connections to Europe.... And whenever that is the case ... it's important to begin informal negotiations with EU officials early in the process to address antitrust issues.

This is a common approach in Europe, ... but U.S. lawyers accustomed to resolving antitrust issues in a more formal setting often fail to recognize it. And that could cause a merger sanctioned by U.S. authorities to fail due to lack of approval from counterparts in the EU.

Moreover, ... a "philosophical gulf" exists between American and European Union antitrust regulators. The U.S. Department of Justice and the Federal Trade Commission routinely focus on potential harm to consumers in evaluating a prospective merger. EU regulators, on the other hand, are concerned primarily about adverse effects the merger will have on competitors.

Those different approaches have come close to scuttling mergers of U.S. corporations on recent occasions.... In 2000, for instance, a merger of General Electric (an airplane engine manufacturer) and Honeywell (which makes avionics and aircraft components) was vetoed by EU regulators after the U.S. Justice Department approved it. Justice accepted the companies' argument that the combination would result in a more efficient operation leading to lower prices for consumers. The EU, however, saw a potential for unfair competition.

Another example involves two U.S. companies that had no assets or subsidiaries in Europe. But the EU had jurisdiction over the attempted merger of McDonnell-Douglas and Boeing (both manufacturers of commercial

airplanes and components) because of their sales to European airlines.

The FTC approved the merger on grounds that it would not substantially reduce competition due to Boeing's existing market dominance. The EU, however, decided that the merger would significantly enhance Boeing's market lead. It took years after the companies began trying to merge in 1997 to gain the EU's approval....

Several treaties have encouraged cooperation between EU and American antitrust regulators, with some success, but more efforts are needed to integrate the two systems....

While these agreements have been successful at the enforcement level, they have failed to foster a cooperative climate in the clearance of transactions such as the GE/Honeywell and the Boeing/McDonnell-Douglas mergers.... Thus, renewed calls for a more collaborative effort between the two sets of regulators were made this spring, given the serious economic and financial repercussions of the philosophical divide."

ABILA COMMITTEES

Members who wish to join an ABILA committee or to organize a new committee should contact either Co-Director of Studies: Professor Leila Sadat, Washington University School of Law (e-mail: sadat@wulaw.wustl.edu; tel: 314-935-6411) or Professor Roger Alford, Pepperdine University School of Law (e-mail: roger.alford@pepperdine.edu; tel: 310-506-4666).

INTERNATIONAL LAW FORUM

The ILA's scholarly journal, *International Law FORUM du droit international*, is now in its sixth volume. The quarterly publication covers all aspects of public and private international law with an unmatched interdisciplinary approach. Its authors include both distinguished practitioners and scholars as well as fresh, new voices in international law. The objective editorial policy allows readers to form their own opinions based on the balanced coverage and diversity of views presented.

Each issue contains seven sections: an Editorial, In the News, Recurring Themes, a Profile, Work in Progress, Conference Scene, and the Bookshelf of a distinguished guest. The current subscription rate for members of the ILA and students is EUR 47 or US\$59. For a free online sample copy, please visit www.brill.nl (online journals). For a free print sample copy, please contact Martinus Nijhoff Publishers, PO Box 9000, 2300 PA Leiden, The Netherlands (Tel: +31-(0)71-535-3500, Fax: +31-(0)71-531-7532).