



# ABILA Newsletter

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## MESSAGE FROM THE PRESIDENT:

In 1998, the lead off panel at International Law Weekend commemorated the 50<sup>th</sup> anniversary of the Universal Declaration on Human Rights. In a brief paper, I discussed the failure of the international legal system to focus on rights of people with disabilities in a formal way, pointing out that none of the then extant human rights conventions addressed that subject. Eight and a half years later, on March 30, 2007, the Convention on the Rights of Persons with Disabilities was opened for signature at the United Nations headquarters. (My paper had nothing to do with that; events were already in motion that led to the convention.) Although many nations, including conspicuously, the United States, have not signed or ratified the convention, it does represent progress in one small and relatively uncontentious area of international law.

An obvious question, then, is what is the American Branch -- as an organization -- doing to advance international law? This is not to ask what individual members are doing; many of our members march in the vanguard of those pushing international law forward. Rather, what does the organization do now and what more might it do?

The work on which we spend the most time is education. International Law Weekend and International Law Weekend-West provide extraordinary fora both to spread the knowledge of diverse aspects of international law to students and to permit practitioners and academics to come up to speed in current issues and topics. We have also been reaching out to students more directly in recent years. Rachel Smith ([ras98@law.georgetown.edu](mailto:ras98@law.georgetown.edu)), our Program Director, has put on several seminars at law schools in Washington, D.C., at which specialists in fields such as trade law or treaty law present those issues to law students. Later this month, we will join with the University of Pittsburgh to present a program on international commercial law and arbitration. In addition, we have recently or will soon co-sponsor a number of meetings: A series on humanitarian law, with California Western School of Law; a Tenth International Wildlife Law Conference, in Granada, Spain, co-sponsored by our Committee on International Environmental Law (see *below*); a symposium on international law with Golden Gate University School of Law; and a symposium on the

social, political and environmental implications of regional trade agreements at St. Louis University School of Law. We also have strong relationships with both the American Society of International Law and the International Law Section of the ABA; we co-sponsor their programs and they ours.

Second, a number of our individuals have contributed in significant ways to the ILA's committees. Those include the Law of the Sea committee, the Human Rights committee, the International Securities Law Committee and others. One of the key roles of the ILA is its contribution to the progressive development of international law and our members have been instrumental in that at the international level.

Third, some of our recent initiatives are reaching maturity.

- We are involved in a joint project with the American Society of International Law on transparency in investor-state arbitrations. We are looking forward to significant output from that effort.
- We have established a Forum on our website. This is not a list serve, but a space for short articles/reviews/comments. We hope members and colleagues will submit their work to it. To submit a piece, please contact Professor William Aceves ([wja@cwsu.edu](mailto:wja@cwsu.edu)) or Professor Peter Yu at Drake University College of Law ([peter\\_yu@msn.com](mailto:peter_yu@msn.com)).
- We are pursuing our relationship with the International Law Students Association. We have begun a program where students may contact our committee chairs in order to seek out projects for which they might become research assistants. We encourage our committees to reach out to students who have already displayed an interest in international legal studies. Contact Jill Hereau ([jshereau@ilsa.org](mailto:jshereau@ilsa.org)).

That said, there are many areas for which we could provide intellectual input. Our committees provide opportunities to produce and publish material of significance, to prepare amicus briefs or to appear before legislative bodies. I encourage our members to think about how they can use our organizational assets to advance international law in areas of interest to them.

Charles D. Siegal

## **WANTED**

We are looking for a volunteer who can help update and maintain the ABILA website and Forum. This task involves reviewing all written content prior to posting to the Forum. If you are interested, please contact William Aceves at California Western School of Law ([wja@cwsl.edu](mailto:wja@cwsl.edu)).

### **STUDENT RESEARCH ASSISTANTS**

The co-directors of studies have developed an arrangement with the International Law Students Association (ILSA) to solicit ILSA student members to serve ABILA committees as research assistants and possible co-reporters. Each committee is free to determine the nature and extent of a research assistant's participation.

A committee seeking help should notify the co-directors of studies, who will arrange with ILSA to distribute the committee's request and an application to ILSA members by e-mail and on ILSA's website. The co-directors of studies, Phil Moremen and Valerie Epps, can be reached at: [moremeph@shu.edu](mailto:moremeph@shu.edu) and [vepps@suffolk.edu](mailto:vepps@suffolk.edu).

### **UPCOMING CONFERENCES**

#### **INTERNATIONAL LAW ASSOCIATION CONFERENCE RIO de JANEIRO AUGUST 17-28, 2008**

The Brazilian Branch of the International Law Association (ILA-Brazil) is pleased to announce that registration for the 73rd ILA Biennial Conference is now open at [www.ilabrasil.org.br/ila2008](http://www.ilabrasil.org.br/ila2008). Early registration up to 15 May will be at a discounted rate. *We encourage you to go.*

The central theme of the Conference will be "Law for the Future," focusing on Natural Resources and Sustainable Development, Rights of the Human Person, Resolution of Private International Disputes, Business and Trade Law, and International Security.

#### **INTERNATIONAL LAW WEEKEND NEW YORK OCTOBER 16-18, 2008**

This year's overall theme is "The United States and International Law: Legal Traditions and Future Possibilities." Please submit proposals by **Friday, April 25, 2008**. Panels are scheduled in ninety-minute blocks and should have 3-4 speakers and a chair (or moderator). Please include a formal title of the panel, a brief description of the panel (no more than 75 words), and the names, titles, and affiliations of the chair and each panelist. The co-chairs are John Noyes ([jnoyes@cwsl.edu](mailto:jnoyes@cwsl.edu)), Catherine Amirfar ([cmamirfar@debevoise.com](mailto:cmamirfar@debevoise.com)) and Katarina Grenfell ([grenfell@un.org](mailto:grenfell@un.org)).

## **INTERNATIONAL LAW WEEKEND-WEST SALEM, OREGON MARCH 6-7, 2009**

The fifth International Law Weekend-West will be hosted by the Willamette University College of Law. ILW-West offers a particularly convenient opportunity every two years for our western members to convene for panel discussions and other activities, but all members are welcome to attend the conference. Further details will appear in later Newsletters and versions at our website. If you would like to organize a panel, please send a short proposal to the Chair of our Executive Committee, Prof. James Nafziger, Willamette University College of Law, 245 Winter St. S.E., Salem, OR 97301, or by e-mail to [jnafzige@willamette.edu](mailto:jnafzige@willamette.edu).

### **REPORT ON THE 10TH INTERNATIONAL WILDLIFE LAW CONFERENCE IN GRANADA, SPAIN**

The Annual International Wildlife Law Conference (IWLC), now in its tenth year, was held in Granada, Spain on March 6-7, 2008, at the University of Granada School of Law. The conference attracted a host of leading specialists in this field drawn from both sides of the Atlantic. The Environmental Law Committee of ABILA was a co-sponsor of the event, and a number of ABILA members participated in the conference, including Wil Burns and Howard Schiffman. The first day of the Conference considered the operationalization of the precautionary principle in international wildlife conservation and management regimes and the practical measures taken to address climate change taken through fisheries and wildlife management organizations, demonstrating progress (and impediments to it) experienced to date through a series of practical case studies. The second day of the Conference took on a decidedly more marine approach, examining the current status and future development of marine protected areas, followed by an examination of key aspects of the vexed issue of cetacean conservation regimes. The Conference closed with a keynote address by Professor David VanderZwaag, examining the inconsistent progress made to date in applying the precautionary principle/approach to fisheries management. Papers growing out of the conference will be published in a special symposium issue of the Journal of International Wildlife Law & Policy.

The 11<sup>th</sup> International Wildlife Law Conference will be held at the Stetson University School of Law on Gulfport, Florida in March of 2009, and a call for papers will be released soon. Please contact the conference's coordinator, Wil Burns, to be placed on the mailing list: [wburns@scu.edu](mailto:wburns@scu.edu).

### **LAW SCHOOL PROGRAMS**

ABILA Program Director Rachel Smith has successfully organized two programs since taking on the position last year, which was created to increase the visibility of ABILA and attract new members. Both events were held at Georgetown University Law Center in downtown Washington, D.C., where Ms. Smith is currently an LL.M. student. In September 2007, ABILA held a Career Panel for the benefit of the law students. Panel members

were ABILA Executive Committee members Christina Cerna, Gary Horlick and David Stewart. Each spoke about their respective fields and the value of joining the ABILA. The event was well attended and the panelists were inundated with questions, staying well after the event was officially over to speak to students individually. It also achieved its intended purpose, as several students submitted ABILA membership applications at the event.

On March 13, 2008, the ABILA co-sponsored an event with the Georgetown International Law Society that was open to the public as well as to students. The program consisted of modified version of two panels from last year's ILW: "Treaties in U.S. Courts" and "A World of Free Trade Agreements." Carlos Vázquez and Melissa Waters, two of the original panelists, and David Stewart provided stimulating discussion of the use of treaties in federal and state courts in general and their application in *Medellin v. Texas* in particular, which is currently being considered by the U.S. Supreme Court. The FTA panel was conducted as a conversation between ABILA Vice-President Gary Horlick, and Ayesha Khanna, International Trade Counsel to the U.S. Senate Finance Committee. This lively and interactive discussion, interspersed with questions from the audience, covered topics ranging from current government policy and its impact on negotiating FTAs to statements about FTAs being made by candidates for the Presidential election.

Local ABILA events provide added value for current ABILA members and increase the visibility of the organization. If you are interested in learning how you can set up an event for little to no cost in your area or would like to host an event in the Washington, D.C. area, please contact Rachel Smith, ABILA Program Director, at ras98@law.georgetown.edu.



## BOOK REVIEWS

Lucy Martinez

***Making Foreign Investment Safe: Property Rights and National Sovereignty***, by Louis T. Wells and Rafiq Ahmed  
Oxford University Press, November 2006  
Pp. 392 (Hardback, US\$49.95), <http://www.oup.com/us>  
ISBN13: 9780195310627 ISBN10: 0195310624

"Making Foreign Investment Safe" is an excellent overview of the risks of foreign investment, with a particular focus on infrastructure projects in Indonesia over the past four decades. The book is structured into four Parts: (1) State Takeover of Infrastructure, 1967-1980; (2) Return of Private Ownership of Infrastructure: Electric Power, 1990-1997; (3) New International Property Rights in Action, 1997-2005; and (4) Revising Privatization and the New International Property Rights System.

In the first three Parts, the authors focus on foreign investment in Indonesia in the satellite/communications and

electricity sectors, why and how these investments were made, how these investments imploded, and the aftermath of these implosions. These Parts are a fascinating read, delving into what the authors describe as "big-power politics, corruption and political influence, poor organization, and, on occasion, perhaps incompetence that led to some rather one-sided deals." (page 4) The authors clearly conducted a large amount of research for these Parts, which are impressively detailed. The discussion is cleverly broken up by boxed text containing the most interesting, if not salacious, aspects of the deals and their main players, such as the "Berkeley Mafia" (page 23), B.J. Habibie (page 92) and "justice, corruption, and property rights" (pages 185-86).

In the final Part, the authors question whether privatization of infrastructure has in fact been successful, and set out a useful summary of "challenges to the new international system of property rights" (page 283) including: an overly rigid view of property rights; inconsistent arbitral awards in investor-state arbitrations; asymmetry in access to arbitration; moral hazard through over-optimism of recovery of large arbitration awards or political risk insurance claims; arbitral tribunals being oriented towards damages awards instead of imposing new contract terms or encouraging negotiated settlement; and overly aggressive intervention by home states in support of their investors abroad. The authors convincingly posit that any lasting system to protect property rights will need to meet most if not all of these identified challenges.

The book strikes a balance between academic interest and corporate pragmatism, reflecting the background of the authors: Professor Wells is at the Harvard Business School, and Mr. Ahmed was a business manager for 28 years, primarily with Exxon Corporation, and also worked as an academic.

The only small criticism I would offer is the almost exclusive focus on events in Indonesia in Parts 1 to 3. The authors' choice of Indonesia is understandable as a "sample study," and in light of their extensive personal and professional experiences in Indonesia - Professor Wells served for 30 years as an advisor to the Indonesian government, and Mr. Ahmed was stationed in Indonesia with Exxon Corporation from 1981 to 1986. However, it might be helpful to include a section on Latin America in future editions of the book, in light of the large number of arbitrations pending against Argentina before the International Centre for Settlement of Investment Disputes (ICSID) arising out of the currency crisis in 2000/2001, Bolivia's recent withdrawal from ICSID, and the wave of recent nationalizations in Venezuela.

"Making Foreign Investment Safe" is a recommended purchase for many practitioners, including those with an interest in international arbitration, political risk insurance, international investment, privatization processes, and energy law, especially electricity. This book is also recommended for business people considering investing in foreign countries, or managing investments in foreign countries, and for government officials considering the privatization of national industries and how best to deal with currency crises. Finally, this book is a mandatory purchase for anyone with an interest in Indonesian history or politics.

## SCHOLARLY WORKS BY ABILA MEMBERS

In order to illustrate some areas of expertise of our members, we are publishing the list of recent works by our Executive Committee members. (We will also post these on the ABILA website.)

### BOOKS

- WILLIAM J. ACEVES, *THE ANATOMY OF TORTURE: A DOCUMENTARY HISTORY OF FILARTIGA V. PENA-IRALA* (2007).
- DAVID J. BEDERMAN, *THE CLASSICAL FOUNDATIONS OF THE AMERICAN CONSTITUTION: PREVAILING WISDOM* (2008).
- DAVID J. BEDERMAN, *GLOBALIZATION AND INTERNATIONAL LAW* (2008).
- DAVID J. BEDERMAN, *INTERNATIONAL LAW IN ANTIQUITY (CAMBRIDGE STUDIES IN INTERNATIONAL AND COMPARATIVE LAW)* (2007).
- RONALD A. BRAND & PAUL M. HERRUP, *THE 2005 HAGUE CONVENTION ON CHOICE OF COURTS AGREEMENTS: COMMENTARY AND DOCUMENTS* (2008).
- RONALD A. BRAND & SCOTT R. JABLONSKI, *FORUM NON CONVENIENS: HISTORY, GLOBAL PRACTICE, AND FUTURE UNDER THE HAGUE CONVENTION ON CHOICE OF COURT AGREEMENTS* (2007).
- HARRY M. FLECHTNER, RONALD A. BRAND & MARK S. WALTER, *DRAFTING CONTRACTS UNDER THE CISG* (2007).
- THOMAS M. FRANCK, MICHAEL J. GLENNON & SEAN D. MURPHY, *FOREIGN RELATIONS AND NATIONAL SECURITY LAW* (2007).
- JOHN NOYES, MARK JANIS, AND LAURA DICKINSON, *INTERNATIONAL LAW STORIES* (2007).
- MICHAEL P. SCHARF, *TERRORISM ON TRIAL* (2008).
- PETER K. YU, *INTELLECTUAL PROPERTY AND INFORMATION WEALTH* (2007).

### ARTICLES

- William J. Aceves & Vienna Colucci, *Amnesty International USA Fulfilling the Legacy: International Justice 60 Years After Nuremberg: Symposium Introduction*, 10 GONZ. J. INT'L L. 2 (2006-2007).
- William J. Aceves, *Human Rights Law and the Use of Incapacitating Biochemical Weapons, in PROMISE OR PERIL? INCAPACITATING BIOCHEMICAL WEAPONS* (Alan M. Pearson et al. eds., 2007).
- Jeffrey Atik & Hans Henrik Lidgard, *Embracing Price Discrimination - TRIPS and Parallel Trade in Pharmaceuticals*, 28 UNIV. PENN. J. INT'L ECON. L. 1043 (2007).
- Margaret M. Ayres, Carlos M. Pelayo, Bethany K. Hipp, Davis Polk & Wardwell, *FCPA Considerations in Mergers and Acquisitions*, 1588 PLI/CORP 239 (2007).
- David J. Bederman, *The Contemporary Contours of Admiralty Jurisdiction*, 31 TUL. MAR. L. J. 291 (2007).
- David J. Bederman, *The Reparation for Injuries Case: The Law of Nations Transformed into International Law*, International Law Stories 307 (John E. Noyes, et al. eds., 2007)
- Ronald A. Brand, *Judicial Review and United States Supreme Court Citations to Foreign and International Law*, 45 DUQ. L. REV. 423 (2007).
- Lorraine M. Brennan & Heather L. Heindel, *High Court Declines to Address Arbitrator Bias Standard*, N.Y. L. J. (Oct. 1, 2007).
- Thomas M. Franck, *Constitutional Development: United States*, 5 INT'L J. CONST. L. 380 (2007).
- Thomas M. Franck, Symposium: Envisioning a More Democratic Global Democracy: *One Man One Vote or One Man One Goat: Reflections on Democracy in the Global Arena*, 13 WIDENER L. REV. 371 (2007).
- Thomas M. Franck, Symposium: *Judgment at Nuremberg Article: Individual Criminal Liability and Collective Civil Responsibility: Do They Reinforce or Contradict One Another?* 6 WASH. U. GLOBAL STUD. L. REV. 567 (2007).
- Thomas M. Franck, *Tribute to Professor Louis B. Sohn*, 48 HARV. INT'L L. J. 23 (2007).
- Gary Horlick & Judith Coleman, Symposium: The WTO at 10 and the Road to Hong Kong Article, *The Compliance Problems of the WTO*, 24 ARIZ. J. INT'L & COMP. L. 141 (2007).
- Scott Horton, *Kriegsraison or Military Necessity? The Bush Administration's Wilhelmine Attitude Towards the Conduct of War*, 30 FORDHAM INT'L L. J. 576 (2007).
- James A.R. Nafziger, Symposium: Antiquities Law, *The Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material*, 8 CHI. J. INT'L L. 147 (2007).
- Ved P. Nanda, *The Landmark 2005 Hague Convention on Choice of Court Agreements*, 42 TEX. INT'L L. J. 773 (2007).
- John E. Noyes, *U.S. Policy and the United Nations Convention on the Law of the Sea*, 39 GEO. WASH. U. INT'L L. REV. 621 (2007).
- John E. Noyes, *Diverse Decision Makers, in INTERNATIONAL LAW STORIES* 5 (John E. Noyes et al. eds., 2007).

- John E. Noyes, *The Caroline: International Law Limits on Resort to Force*, in INTERNATIONAL LAW STORIES 263 (John E. Noyes, et al. eds., 2007).
- John E. Noyes, *Territorial Sea*, in 4 THE OXFORD ENCYCLOPEDIA OF MARITIME HISTORY 125 (John B. Hattendorf ed., 2007).
- Mary T. O'Connor, Lorraine M. Brennan & Christopher J. Woods, *Negotiating the Maze of IP Protection*, NAT'L L. J. (Apr. 9, 2007).
- Leila Nadya Sadat, Symposium on the New Face of Armed Conflict: *Enemy Combatants after Hamdan v. Rumsfeld: Extraordinary Rendition, Torture, and Other Nightmares from the War on Terror*, 75 GEO. WASH. L. REV. 1200 (2007).
- Leila Nadya Sadat, Symposium: Judgment at Nuremberg Introduction, *Judgment at Nuremberg: Foreword to the Symposium*, 6 WASH. U. GLOBAL STUD. L. REV. 491 (2007).
- Michael P. Scharf, *Chaos in the Courtroom: Controlling Disruptive Defendants and Contumacious Counsel in War Crimes Trials*, 39 CASE W. RES. J. INT'L L. 155 (2006-2007).
- Michael P. Scharf, *Lessons from the Saddam Trial*, 39 CASE W. RES. J. INT'L L. 1 (2006-2007).
- Michael P. Scharf, Symposium: The Fifth Plague, *On Terrorism And Whistleblowing*, 38 CASE W. RES. J. INT'L L. 567 (2006-2007).
- Michael P. Scharf, *Saddam Hussein on Trial: What Went Awry? The Iraqi High Tribunal*, 5 J. INT'L CRIM. JUST. 258 (2007).
- Susan W. Tiefenbrun, *Updating the Domestic and International Impact of the U.S. Victims of Trafficking Protection Act of 2000: Does Law Deter Crime?*, 38 CASE W. RES. J. INT'L LAW 249 (2006-2007).
- Peter K. Yu, *Access to Medicines, BRICS Alliances, and Collective Action*, 34 AM. J.L. & MED. (forthcoming 2008).
- Peter K. Yu, *A Tale of Two Development Agendas*, 34 OHIO N.U. L. REV. (forthcoming 2008).
- Peter K. Yu, *Building Intellectual Property Coalitions for Development*, in STRATEGIES FOR IMPLEMENTING WIPO'S DEVELOPMENT AGENDA (Jeremy de Beer ed., forthcoming 2008).
- Peter K. Yu, *Challenges to the Development of a Human Rights Framework for Intellectual Property*, in INTELLECTUAL PROPERTY AND HUMAN RIGHTS (Paul L.C. Torremans ed., 2d ed., forthcoming 2008).
- Peter K. Yu, *Complex Guoqing and Intellectual Property Reforms in China*, in INTELLECTUAL PROPERTY AND SUSTAINABLE DEVELOPMENT: SELECTED ISSUES (forthcoming 2008).
- Peter K. Yu, *Five Disharmonizing Trends in the International Intellectual Property Regime*, in 4 INTELLECTUAL PROPERTY AND INFORMATION WEALTH: ISSUES AND PRACTICES IN THE DIGITAL AGE 73 (Peter K. Yu ed., 2007).
- Peter K. Yu, *Intellectual Property, Cultural Relics, and Intangible Heritage*, 81 TEMPLE L. REV. (forthcoming 2008).
- Peter K. Yu, *Intellectual Property, Economic Development, and the China Puzzle*, in INTELLECTUAL PROPERTY, TRADE AND DEVELOPMENT: STRATEGIES TO OPTIMIZE ECONOMIC DEVELOPMENT IN A TRIPS PLUS ERA 173 (Daniel J. Gervais ed., 2007).
- Peter K. Yu, *Intellectual Property, Foreign Direct Investment and the China Exception*, in THE GLOBAL CHALLENGE OF INTELLECTUAL PROPERTY RIGHTS (Subhash C. Jain & Robert C. Bird eds., forthcoming 2008).
- Peter K. Yu, *The International Enclosure Movement*, 82 IND. L.J. 827 (2007).
- Peter K. Yu, *International Enclosure, the Regime Complex, and Intellectual Property Schizophrenia*, 2007 MICH. ST. L. REV. 1.
- Peter K. Yu, *The Political Economy of Data Protection*, 83 CHI.-KENT L. REV. (forthcoming 2008).
- Peter K. Yu, *The Sweet and Sour Story of Chinese Intellectual Property Rights*, in TECHNOLOGY, PROGRESS AND PROSPERITY: A HISTORY OF INTELLECTUAL PROPERTY AND DEVELOPMENT (Graham Dutfield & Uma Suthersanen eds., forthcoming 2008).
- Peter K. Yu, *Teaching International Intellectual Property Law*, 52 ST. LOUIS U. L.J. (forthcoming 2008).
- Peter K. Yu, *Ten Common Questions About Intellectual Property and Human Rights*, 23 GA. ST. U. L. REV. (forthcoming 2007).
- Peter K. Yu, *Three Questions That Will Make You Rethink the U.S.-China Intellectual Property Debate*, 7 J. MARSHALL REV. INTEL. PROP. L. (forthcoming 2008).