

# NEWSLETTER

## American Branch of the International Law Association



### Branch Board of Directors Meeting

The next meeting of the Branch Board of Directors will take place at ILW 2016, on Saturday, October 29, from 12:30-3:15 pm in Room 4-02 at the Fordham University School of Law, just before the Annual Meeting of the Branch. All members of the Board are expected to attend in person or by teleconference. Those who are unable to attend should communicate promptly with Amity Boye, the Branch's Honorary Secretary. The agenda and associated reports are being circulated to Board members.

## International Law Weekend 2016

October 27-29, 2016 in New York City

International Law Weekend 2016 (ILW 2016) – the American Branch's premier event of the year – will take place on October 27-29, 2016 in New York City. The conference will be held in conjunction with the American Branch's 95th annual meeting. The opening panel will be at the New York City Bar Association (42 West 44th Street) on Thursday evening, October 27, 2016, followed by two full days of panels and programs at Fordham University School of Law (150 West 62nd Street).

Although walk-in registration will be available, you are **urged to register in advance** and online at [http://www.ila-americanbranch.org/intl\\_law\\_wknd.aspx](http://www.ila-americanbranch.org/intl_law_wknd.aspx). You can find the full program at the same website.

The unifying theme for ILW 2016 is "International Law 5.0." The world is changing at an accelerating rate. From technological advances to environmental transformations, international lawyers are forced to confront emerging forces and new scenarios. Even established principles of law are no longer settled. These tectonic shifts have been felt throughout the geography of international law. Legal professionals at every level – local, national, regional, and international – must change their practice to meet a changing world. Innovation will become necessary for survival.

ILW 2016 will explore these issues through a diverse collection of engaging and provocative panels. Many of the more than 30 panels will qualify for CLE credit. The audience will include practitioners, academics, UN diplomats, business leaders, federal and state officials, NGO leaders, journalists, students, and interested citizens.

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### ANNUAL ABILA MEMBERS MEETING

The annual Branch members meeting will take place at ILW 2016, on Saturday, October 29, from 3:30 to 5:00 in Room 4-02 at the Fordham University School of Law. On the agenda will be reports on the state of the Branch, our recent activities and plans for the coming year, and most importantly, the election of Branch officers and members of the Board of Directors. The agenda and reports, including the list of nominees for election, will be posted on the Branch website beforehand. All Branch members are urged to attend.

**Follow ILW2016 on Twitter — ABILA's Twitter handle is: @theABILA; Hashtag: #ILW2016**

## International Law Weekend 2016

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The opening panel, scheduled for 6:30 p.m. on Thursday evening at the New York City Bar Association, will address the topic of “Leadership Transitions and International Law.” Panelists will include Miguel de Serpa Soares, Under-Secretary-General for Legal Affairs and United Nations Legal Counsel; Brian Egan, Legal Adviser to the U.S. Department of State; Päivi Kaukoranta, Director General of the Legal Service, Foreign Ministry of Finland; and Donald Francis Donovan, Partner and Co-Head of the International disputes Group, Debevoise & Plimpton LLP.

The remainder of the conference will take place at Fordham Law. Friday’s Keynote Address, titled “Dealing with Bribery and Corruption in International Trade and Investment: Still at International Law 1.0?”, will be given by Lucinda Low, the President of the American Society of International Law. On Friday evening, the Permanent Mission of Peru to the UN will host a reception (space is limited and **pre-registration and payment is required**; see [http://www.ila-americanbranch.org/intl\\_law\\_wknd.aspx](http://www.ila-americanbranch.org/intl_law_wknd.aspx)).

This year, ILW offers two new events. An Emerging Voices panel is being offered to provide new academics and legal professionals with an opportunity to present their research in a supportive environment. In addition, several films addressing topics in international law will be offered on Saturday afternoon.

ILW 2016’s Organizing Committee is co-chaired by Profs. William Aceves and Peter Yu, and includes Samuel Baumgartner, Carlos Fuentes, Rahim Moloo, and Jessica Simonoff, as well as ILSA’s Program Director Tessa Walker and ABILA President David P. Stewart.

Following ILW, the *ILSA Journal of International and Comparative Law* will publish an issue containing many of the papers presented at International Law Weekend. This issue is titled “The International Practitioner’s Notebook.” An electronic version of the issue will be sent to all American Branch members.

ILW 2016 is sponsored and organized by the American Branch of the International Law Association (ABILA) and the International Law Students Association (ILSA).

## ILW-West 2017

University of Denver Sturm College of Law  
February 24, 2017

The Sturm College of Law at the University of Denver, and its Ved Nanda Center for International Law, will host the 2017 ILW-West regional meeting of the American Branch of the International Law Association (ABILA) on February 24, 2017. The theme is “International Law in a World of Change.”

Presentations and discussion will focus on various challenges related to dispute settlement, trade and investment, human rights and human dignity, international criminal law, and international environment. With the arrival of a new administration in Washington, and the continuing progress made on drafting the new Restatement (Fourth), Foreign Relations Law, there is an opportunity to cover these developments as well. ABILA President David P. Stewart will be a keynote speaker.

Additional information, including about registration, will be available on the Sturm College of Law website, <http://www.law.du.edu>.

## ILA EXECUTIVE COUNCIL MEETING (AUGUST 2016)

The Executive Council of the International Law Association met twice during the ILA Biennial in Johannesburg, once on August 8, and again on August 11, 2016. Officers and representatives of some 23 national branches were in attendance. The American Branch was represented by President David P. Stewart. Profs. Cynthia Lichtenstein and James Nafziger were present in their capacities as ILA Vice-Chair and member of the Executive Council, respectively.

In accordance with ILA procedures, ILA President Prof. Ruth Wedgwood (who chairs the Branch’s Board of Directors) relinquished her post as President of the Association to South African Branch President Hennie Strydom, who was elected new ILA President at the opening session of the Biennial.

The Association reported healthy finances as of October 31, 2016, with substantial increases in the Scholarship Fund (which permitted 20 younger scholars selected through competition to attend the Biennial) as a result of contributions from national branches.

The meeting heard a report on planning for the 78th ILA Biennial Conference, to be held in Sydney, Australia in 2018. Subsequent Biennials are anticipated in Kyoto, Japan in 2020, and in Portugal in 2022. Plans are also being discussed for a celebration in Paris in 2023 to mark the 150th anniversary of the ILA.

The next meeting of the Council is scheduled November 12, 2016 in London.

Submitted by David P. Stewart

## ILW-South 2017

**Texas A&M University  
School of Law  
Thursday, March 2 - Friday,  
March 3, 2017**

A second regional meeting, which will be the first International Law Weekend – South, will take place on March 2-3, 2017, at Texas A&M University School of Law in Fort Worth, Texas. The focus of this conference will be “The Global and Local Future of International Trade, Human Rights and Development.”

Barrier-free trade, protection of human rights, and sustainable development were the hallmarks and guiding principles of the international order created following World War II. This international order generated the forces that, together with technology, have produced globalization. New opportunities are now emerging as the old international order transitions into a global one. However, the realignment required by the new order is putting pressure on existing political and economic interests.

Join experts from the Texas A&M University School of Law, scholars, practitioners, and government officials in considering the global and local future of international trade, human rights and development. How will the emerging order operate? Who will gain and who will lose? How will the new order interact with the old?

Confirmed Plenary Speakers include: Edward Kwakwa, Senior Director, Global Challenges Department and former Legal Counsel, World Intellectual Property

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**Lord Mance, Opening Plenary, Johannesburg**

## ILA BIENNIAL 2016

**Johannesburg, South Africa  
August 7-11, 2016**

The 77th ILA Biennial Conference took place August 7-11, 2016 in Johannesburg, South Africa. The theme was “International Law and State Practice: Is there a North/South Divide?” As usual at ILA Biennials, the conference included plenary sessions and addresses as well as open and closed (working) meetings of ILA committees and study groups.

Sponsored by the South African Branch (founded in 1915), this was the first ILA Biennial held in a sub-Saharan Africa country. Fifty-seven regional and national branches were represented, and more than 350 delegates attended.

The American Branch was represented by 29 members, including Prof. Frederick Abbott, Prof. Andrea Bjorklund, Dr. Ruth Atherton, Dr. Cristina M. Mariottini, Dr. Ioana Cismas, Tiffany Basciano, Prof. Henry D. Gabriel, Prof. Charles Jalloh, George Anthony Long, Ms. Carrie Ann Comer, Prof. Cymie Payne, Thomas Baxter, Jr., Prof. Christina Cerna, Prof. Aaron Fellmeth, Prof. John Gamble, David Gross, Dean Charlotte Ku, Prof. Cynthia Lichtenstein, Mr. Malefetsane Moseme, Prof. James Nafziger, Prof. Mary Ellen O'Connell, Mr. Arnold Pronto, Captain Ash Roach, Prof. Brad Roth, Mr. Paul Stevens, Prof. David Stewart, Prof. Louise Ellen Teitz, Prof. Ruth Wedgwood (outgoing ILA President), and Prof. Siegfried Wiessner.

Judge Navi Pillay gave the opening keynote address.

Twenty-three of the ILA's 24 committees held open working sessions (and a number of closed meetings) during the conference, as well as 8 of the ILA's 12 Study Groups. At the Closing Ceremony on August 11, six new ILA Committee Resolutions were adopted. They included resolutions concerning the following committees: International Protection of Consumers, International Human Rights Law, Cultural Heritage Law, International Commercial Arbitration, International Monetary Law, and Non State Actors. For the first time, resolutions were also adopted re-

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## ILW –South 2017

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Organization; Dinah Shelton, Manatt/Ahn Professor of International Law Emeritus, The George Washington University Law School; Ricardo Ramirez, Member, World Trade Organization Appellate Body; Eduardo Ferrer MacGregor, Vice President of the Inter-American Court of Human Rights; and Robb Voyles, Executive Vice President and General Counsel, Halliburton.

The panels will cover such topics as international corruption and the Foreign Corrupt Practices Act, intellectual property and regional trade agreements, making trade work for sustainable development, the role of judges in enforcing international and regional agreements, new developments in resource management and trade, and evolving regional structures in trade, investment and human rights. CLE credit will be available. For more information, refer to the website program for more information: <https://law.tamu.edu/faculty-staff/news-events/conferences-and-symposia/ILWS>.

## ILA BIENNIAL 2016

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garding Study Groups, including those on Principles on the Engagement of Domestic Courts with International Law, on Due Diligence in International Law, and on Preferential Trade Agreements.

A major topic of discussion in the Executive Council concerned proposed amendments to the ILA Constitution, permitting use of electronic means of communication for ILA publications and permitting the Executive Council to take action between meetings. Other technical changes concerned the number of trustees required under U.K. law.

A highlight of the event, for ABILA Members, was a reception and briefing by the U.S. consulate in Johannesburg. Members of the American Branch (along with several members of the South African judiciary and special guests) were invited to the home of Consul General Christopher Rowan and Mrs. Eleanor Rowan for the event.

Mr. Rowan provided an overview of recent events in South Africa, including the current political landscape and municipal election results, trade developments, activities aimed at the promotion of women and girls (via the DREAM project), PEPFAR's work on HIV, and immigration. The reception allowed members of the ILA to meet the Consulate's staff and several South African judges to discuss international legal developments related to such matters as human rights, intellectual property, trade, and legal scholar training.

One special guest in attendance was renowned human rights advocate George Bizos of the Legal Resources Center. ABILA member Ruth Atherton, who was able to spend time talking with Mr. Bizos, commented that "it was absolutely astonishing to hear Mr. Bizos describe his life story firsthand. He recalled his escape from Greece in World War II, his near career in medicine and his journey into law. Truly thrilling." A detailed Bio of Mr. Bizos can be found at <http://www.sahistory.org.za/people/george-bizos>.

## Please Pay Your Dues

ABILA charges dues on a calendar year basis (from January to December each year). As we finish the 3rd quarter of the dues year, we ask those who have not yet renewed to kindly do so promptly.

You can renew your dues on line at: <http://www.ila-americanbranch.org/Membership.aspx>.

If you prefer to mail a check, send it (payable to the American Branch, International Law Association) to:

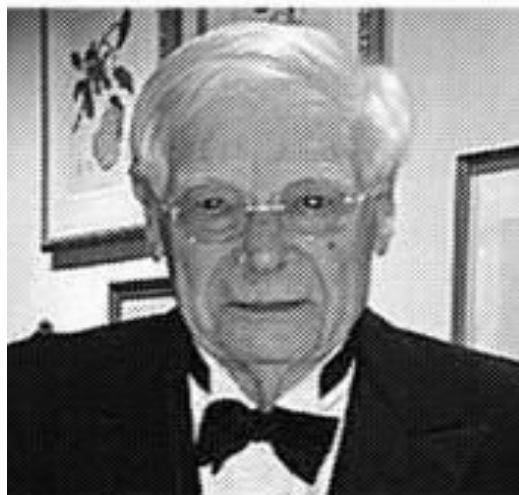
Seana Flanagin, c/o Munger, Tolles & Olson LLP, 355 South Grand Ave., 35th Flr., Los Angeles, CA 90071.

If you are not sure of your status, or you prefer to pay by credit card, send an email to [seana.ila.americanbranch@gmail.com](mailto:seana.ila.americanbranch@gmail.com). We look forward to your continued membership.

Stay in touch! Join the American Branch group on LinkedIn.

VISIT THE AMERICAN  
BRANCH WEBSITE:  
[WWW.ILA-AMERICANBRANCH.ORG](http://WWW.ILA-AMERICANBRANCH.ORG)

## ROBERT B. VON MEHREN 1922-2016



Robert B. von Mehren, a leader in the International Law Association and the American Branch, died on May 5, 2016, at age 93. He had a distinguished career as a partner at Debevoise & Plimpton in New York and as an international arbitrator, a field in which he was a pioneer and a distinguished practitioner.

Bob graduated *summa cum laude* from Yale and *magna cum laude* from Harvard Law School, where he served as president of the *Harvard Law Review*. He clerked for Judge Learned Hand on the Second Circuit and Justice Stanley Reed on the U.S. Supreme Court before joining Debevoise. Early in his career, Bob served on the legal team defending Alger Hiss against charges of perjury; Hiss had been accused of being a Soviet spy in testimony before the Committee for the Investigation of Un-American Activities of the House of Representatives.

Bob held a variety of leadership roles in the American Branch. He was member of our Executive Committee from 1971-1992; President of the Branch from 1979-1986; Chair of the Executive Committee from 1986-1992; and Honorary Vice President from 1992 until his death.

In the International Law Association, Bob was Vice Chair of the Executive Council from 1989-2008, one of very few Americans to have held that position. He also chaired the ILA Committee on Transnational Recognition and Enforcement of Foreign Public Laws (1984-1988) and provided valuable service as a member of the Steering Committees of ILA biennial conferences. These Steering Committees vet every ILA resolution produced by ILA committee sessions before the resolution is sent to the ILA plenary for approval or rejection. Although other organizations – including the American Arbitration Association, the Practising Law Institute, committees of the New York City Bar Association, and the Harvard Law School Association of New York – also benefited from Bob's leadership skills, Bob once told his colleagues that of all the organizations he served, the ILA was his very favorite.

Bob is survived by his wife, Susan Heller Anderson, a writer and former *New York Times* reporter; his son Carl; his three daughters Katharine, Jane, and Margaret; and his stepson Philip D. Anderson. Predeceasing him were his first wife, Mary Katharine; his son John; and his identical twin Arthur T. von Mehren.

Bob's death is a great loss to his family, to the international arbitration community, and more generally to the community of all international lawyers, which Oscar Schachter called "the invisible college." The Branch mourns his passing, and at the same time we celebrate his life and his many contributions to international law. For more on Bob's life, character, and work, see <http://www.legacy.com/obituaries/nytimes/obituary.aspx?pid=179909973> and <http://johnqbarrett.com/2016/05/12/robert-b-von-mehren-1922-2016/>.



# The Next President’s Fight Against Terror

Wednesday, October 19, 2016, Washington, D.C.

On Wednesday, October 19, at 8:30 a.m., the Sandra Day O'Connor College of Law at Arizona State University, New America, and The McCain Institute for International Leadership will host a one-day conference on international rule of law and counterterrorism. The event will be held at the New America Foundation, 740 15th Street NW, Suite 900, Washington, DC 20005. To register, go to <https://www.law.asu.edu/law-events/next-president%E2%80%99s-fight-against-terror>.

The event will feature scholars, practitioners, and former senior government officials, and will explore whether U.S. counterterrorism policies and activities are consistent with the rule of law, how other countries are affected by these policies and efforts, and their impact on the United States' ability to help strengthen legal systems around the world. Throughout the day, speakers and panelists will discuss recommendations for counterterrorism policies for the next administration.

Speakers and panelists include Dr. Andrew J. Bacevich, Peter Bergen, Director, New America's International Security Program; Mary B. DeRosa, Distinguished Visitor from Practice at Georgetown Law and former Legal Adviser at the National Security Council; Dr. Aykan Erdemir, Senior Fellow, Foundation for Defense of Democracies/former member of the Turkish Parliament; Prof. Samuel Moyn, Harvard University; Dr. Nancy Okail, Executive Director, Tahrir Institute for Middle East Policy; Raza Ahmad Rumi, Scholar in Residence, Ithaca College; and Hina Shamsi, Director, National Security Project, American Civil Liberties Union.

Julia Fromholz, Director and Professor of Law, Rule of Law & Governance Program, Sandra Day O'Connor College of Law, Arizona State University, and Prof. Jack Goldsmith, Harvard Law School and Barry Goldwater Chair of American Institutions, Arizona State University, will moderate.

The American Branch is a cosponsor of this conference.

## BRANCH MEMBERSHIP

Branch membership as of October 2016 stands at **224** paid individuals. In addition, we have **8** student members and **12** organizational or institutional members. We welcome the following members who joined to date in 2016:

- Heather Alexander
- Prof. Julian Arato
- Ruth Atherton
- Kenneth August
- Stefani Buster
- Carrie Anne comer
- Patricia Cruz
- Manuela de la Helguera
- Kabir Duggal
- Prof. Jeffrey Dunoff
- Robin Frank
- Lauren Gaffney
- Alexandra Harrington
- Mohamed Helal
- Marlene Hougbedji
- Kyung Min Lee
- Denise Lewis
- Ofilio Mayorga
- Brian McGarry
- Jennifer Mertus
- Nubia Mulling
- Daniel Reich
- Katrina Rogers
- Annette Sake
- Prof. Matiangai Sirleaf
- Prof. Pamela Stephens
- Chantal Thomas
- Prof. Rachel Van Landingham
- Jocelyn Getgen
- Diana Kearney
- Dr. Bart Smit Duijzentkunst
- Arpita Goswani Sachdeva
- Kirstin Smith
- George Benaur

### RECRUIT NEW MEMBERS!

Every Branch member is encouraged to recruit *at least one* new member in the next three months – a practitioner, a member of an in-house corporate law office, a law student or graduate student, a fellow academic (whether or not in the legal field), someone who works in an international organization or a governmental position, or anyone interested in our work in the field of international law.

Our goal is 300 paid members and 20 institutional members. The Branch depends on you for its growth and renewal. Pitch in today! If each of us can bring in 1 (or even better 2) new members, we will be well on our way. ILW 2016 is a terrific way to get new members involved. Membership brochures are available from Seana Flanagan at [Seana.ila.americanbranch@gmail.com](mailto:Seana.ila.americanbranch@gmail.com).

## The New President and Crises in the Global Order

St. John's Law School  
Queens, New York  
October 26, 2016  
4:30 p.m.

Syria. Brexit. The Transpacific partnership. Crimea. Libya. A global migration crisis. The South China Sea. Hacking and cyber-conflict. A new UN Secretary General. The next President of the United States will face a complex set of challenges and crises that test the limits of international law and strain the current global order. St. John's Center for International and Comparative Law co-directors Professors Borgen and McGuinness convene their colleagues from *Opinio Juris*, the leading website of debate and discussion about international law, for a lively conversation about international law and U.S. foreign policy in this Presidential election year.

Discussants are Kristen Boon (Seton Hall University Law School), Chris Borgen (St. John's University School of Law), Juian Ku (Maurice A. Deane School of Law at Hofstra University), Peggy McGuinness (St. John's University School of Law), and Deborah Pearlstein (Benjamin N. Cardozo School of Law).

The ABILA is a co-sponsor of this event.

*For information about ILA, ABILA and co-sponsored events, please see:*

[www.ila-americanbranch.org/  
ABILA\\_ILA\\_Events.aspx](http://www.ila-americanbranch.org/ABILA_ILA_Events.aspx)

## NEWS OF AMERICAN BRANCH COMMITTEES

The following items report on events in the various ABILA Branch committees over the past year. A more complete report will be given by the Co-Directors of Studies at the Board of Directors Meeting at ILW 2016. To volunteer for one of the committees, contact the committee chair or the Branch Co-Directors of Studies, Aaron Fellmeth, [aaron.fellmeth@asu.edu](mailto:aaron.fellmeth@asu.edu) and Chiara Giorgetti, [cgiorget@richmond.edu](mailto:cgiorget@richmond.edu). All ABILA members are welcome to become active in Branch committees.

### International Criminal Court Committee

Over the past year, the International Criminal Court Committee published a document: "Libya & The International Criminal Court – Questions and Answers: The Libyan Death Sentences Against Saif Al-Islam Gaddafi and Abdullah Al-Senussi & The ICC's Admissibility Rulings," Nov. 2015, which the Committee Chair distributed at the ICC Assembly of States Parties meeting in The Hague, Netherlands, in Nov. 2015. The Committee also sponsored a panel at ILW 2015 entitled: "Accountability for Crimes in Syria and Iraq."

Submitted by Jennifer Trahan, Chair

### International Environmental Law Committee

This past year, the Committee continued "the Global Energy and Environmental Law Podcast," which is co-sponsored by ABILA, see <http://theglobalenergyandenvironmentallaw.podbean.com> and now also the University of South Dakota School of Law. ABILA generously offered to pay for the first year's podcast hosting fee (less than \$100), and the Committee hopes that will also be the case this coming year as well.

This podcast series has been very successful. Over the past year alone (August 2015 to August 2016), it saw 133,992 total hits and 4,062 total downloads. Over the entire existence of the podcast, there were almost 225,000 total hits and 4,300 total downloads, all featuring the ABILA logo). All podcasts are announced to the IEL members individually via email. Per the recommendations of select ABILA leaders at ILW 2015, the Committee Chair wrote a report on how she had reached the success she did with the podcast so that the model could be repeated by other interest groups. I had an IT person create detailed screenshots, etc., for the ease of use of potentially interested parties.

Submitted by Myanna Dellinger, Chair

### International Humanitarian Law Committee

This year, the IHL Committee organized a panel for ILW 2015 ., entitled "The Department of Defense Law of War Manual: The Tension between State and Non-State Expressions of Customary International Humanitarian Law." The panel brought together a representative from the Department of Defense who had worked on the Law of War Manual, an ICRC legal advisor with experi-

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## NEWS OF AMERICAN BRANCH COMMITTEES (cont'd)

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ence working on the ICRC's Customary Law Database, and other experts in the field to discuss the formation of customary international humanitarian law (CIHL), using such specific examples as the new DoD Law of War Manual or the ICRC Study on CIHL. The panelists discussed how CIHL emerges and the weight to be given to differing assessments of the customary status of specific IHL topics. A report of the panel was drafted and will be put on the IHL Committee homepage for future reference.

The IHL Committee is also organizing a panel for ILW 2016 entitled "The Legal & Policy Regulation of Armed Conflict in/from/thru/to Outer Space."

Submitted by Andrea Harrison, Chair

### **International Human Rights Committee**

The Committee Chair traveled to the ILA Biennial in Johannesburg, where he attended the International Human Rights Law Committee's meeting (chaired by Christina Cerna) regarding its draft report on the domestic implementation of judgments of the ICJ. The chair then distributed the ILA Committee's 2014 report, 2016 draft report, and the accompanying resolution to the ABILA committee.

In addition, the International Human Rights Committee will sponsor a roundtable on "Bringing International Human Rights Home" to the United States for International Law Weekend 2016. The roundtable explores how international human rights law is currently enforced in the United States, and the desirability and feasibility of strategies—political, legal, and juridical—for improving U.S. conformity to IHRL norms. It will be chaired by myself and feature William Aceves, Dinah Shelton, Peter Spiro, and Beth Stephens as panelists.

Submitted by Aaron Fellmeth, Chair

### **International Arbitration Committee**

The Committee has a new chair and no recent past activities. We solicit new members interested in participating actively and proposing new projects.

Submitted by Daniel Reich, Chair

### **International Intellectual Property Committee**

In the past few years, the Committee on International Intellectual Property has been studying the interrelationship between intellectual property and human rights. Specifically, the project focuses on article 15(1)(b) of the International Covenant on Economic, Social and Cultural Rights – the provision that has yet to be authoritatively interpreted by a general comment of the U.N. Com-

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## Report on the United Nations: The International Law Commission Concludes Its Quinquennium

The International Law Commission of the United Nations was established to assist the General Assembly in carrying out its functions under article 13 (1)(a) of the Charter of the United Nations, relating to the codification and progressive development of international law. The Commission is constituted of 34 members elected by the Member States of the United Nations, across the five regional groups recognized by the organization, to serve a term of five years. The most recent quinquennium (2012 to 2016) was concluded in August.

Over the course of the quinquennium the Commission considered 12 topics, of which the work was completed on four. Of those, two resulted in the adoption of instruments. In 2014, the Commission adopted a set of 31 draft articles on the expulsion of aliens, together with commentaries thereto, and recommended that the General Assembly take note of the draft articles and encourage their widest possible dissemination, and consider, at a later stage, the elaboration of a convention on the basis of the draft articles.

This year, the Commission adopted a set of 18 draft articles on the protection of persons in the event of disasters, together with commentaries thereto, and recommended to the General Assembly the elaboration of a convention on the basis of the draft articles. The other two topics were concluded by means of the adoption of reports. In 2014, the Commission

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## Report on the United Nations: The International Law Commission Concludes Its Quinquennium (2011-2016)

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adopted its final report on the topic "Obligation to extradite or prosecute (*aut dedere aut judicare*)," which it transmitted to the General Assembly. The Commission adopted a similar *modus operandi* last year when it transmitted to the General Assembly the final report of the Study Group on the Most-Favoured-Nation clause, together with a set of summary conclusions, and recommended that the Assembly encourage their widest possible dissemination.

Of the topics currently under consideration, and on which work will continue in the next quinquennium, two have reached the end of the first reading stage. At this year's session, the Commission adopted, on first reading, a set of 16 draft conclusions, together with commentaries thereto, on the identification of customary international law. It also adopted, on first reading, a set of 13 draft conclusions, together with commentaries thereto, on subsequent agreements and subsequent practice in relation to the interpretation of treaties. Both texts will be submitted to the member states of the United Nations for comment, and the respective second readings are expected to commence in 2018, on the basis of the comments to be received.

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## NEWS OF AMERICAN BRANCH COMMITTEES (cont'd)

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mittee on Economic, Social and Cultural Rights. That provision recognizes "the right of everyone ... [t]o enjoy the benefits of scientific progress and its applications."

For International Law Weekend 2015, the Committee put together a panel on "TRIPS Agreement at 20," which covered the twenty years of the WTO TRIPS Agreement as well as new TRIPS-related developments, such as the negotiation of the Trans-Pacific Partnership and the Transatlantic Trade and Investment Partnership.

At this year's International Law Weekend, the Committee-sponsored CLE panel will focus on "The Investment-Related Aspects of Intellectual Property Rights." This panel is particularly timely in light of the recent signature of the Trans-Pacific Partnership Agreement and the investor-state dispute settlement suits Philip Morris and Eli Lilly have filed to challenge plain packaging regulations in Uruguay and Australia and patent requirements in Canada. Speakers will include Sean Flynn (American), Burcu Kilic (Public Citizen), Barbara Lauriat (KCL), Meredith Kolsky Lewis (Buffalo), and Peter Yu (Texas A&M).

Submitted by Peter Yu, Chair

### Islamic Law Committee

The Committee had planned a conference and edited volume on the intersection of international humanitarian law and Islamic law, but after significant planning and preparation it fell through from lack of funding.

Submitted by Haider Hamoudi, Chair

### Law of the Sea Committee

The Committee will sponsor a panel at ILW 2016 entitled "Change and Stability [or Instability] in the Edges of the Oceans: Coastal Baselines, Rising Seas: The Effect of Climate Change."

Participants will include J. Ashley Roach, LOS Committee member and Chair, ILA Baselines Committee, presenter; George Walker, LOS Committee Chair, ILA Baselines Committee member, panel moderator. Committee member Wil Burns will also be a presenter on the panel "The Road from Paris: Implications of the Paris Agreement for Climate Policy in 2020 and Beyond" at the 2016 Meeting.

Submitted by George Walker, Chair

### Outer Space Law Committee

The Committee will sponsor a panel at ILW 2016 entitled "New Satellite Technologies and the Challenges for Space Law Evolution: Is Space Law Ready

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## NEWS OF AMERICAN BRANCH COMMITTEES (cont'd)

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for Satellite 5.0?” In addition, we have sponsored additional panels and research through the home institutions of the chairs (University of Nebraska and George Washington University) that have featured government-industry roundtables on the issues we have looked at in our ILW panels the past several years (new technologies, liability, property rights, regulation of commercial space, etc.).

The University of Nebraska’s 9th Annual DC Space Law Conference on Oct. 17, 2016 will focus on New Technologies and Business Models in Commercial Space: Perspectives on Regulation. The discussion in DC will inform and advance the discussion for the ABILA panel two weeks later.

Recommendations in Professor Schaefer’s article “The Need for Federal Preemption and International Negotiations Regarding Liability Caps and Waivers of Liability in the U.S. Commercial Space Industry,” 33 *Berkeley Journal of International Law* 223 (2015), were adopted by the Congress in Public Law 114-90, signed into law November 25, 2015.

Finally, as co-chairs, we drafted and signed letters to influential Congressional leaders on space law issues arising in the context of Congressional consideration of what became in late 2015 Public Law 114-90. The law adopted recommendations on space resource property rights provisions in the Schaefer/Hertzfeld letter to Congress of May 15, 2015. In 2016, they have been involved in discussions explaining the provisions of the law to interested persons.

Submitted by Matt Schaefer & Henry Hertzfeld, Co-Chairs

### Committee on the Use of Force

Profs. Joyner and Beard agreed to chair this new Committee last year, which has the following mandate: (1) To advance the discussion and analysis of international legal issues pertaining to the use of force, broadly defined, including efforts to prevent recourse by states to the use of armed force such as arms control efforts; and (2) To advance the discussion of scholarship in the field and conduct assessments of contemporary state practice.

Toward these ends, the Committee hopes to engage in a variety of activities, including: (1) Submitting annual proposals to the Organizing Committee for panels at the ILW (held in October in NYC) devoted to current international legal issues in the field and sponsoring panels on these topics at ILW Midwest and ILW West; (2) Sponsoring symposiums, workshops and/or podcasts at different law schools throughout the United States devoted to international legal issues in the field (podcasts may be open to participation by remote access to panelists and other contributors). Topics will focus on Committee members’ recent scholarship, research or other work on relevant international legal subjects; and (3) Working in conjunction with contributors to major online

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## Report on the United Nations: The International Law Commission Concludes Its Quinquennium (2011-2016)

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Work is also scheduled to continue on six further topics. The Commission has been working on the topic “immunity of state officials from foreign criminal jurisdiction” since 2008, and most recently had before it the fifth report of the Special Rapporteur, which analyzed the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. The Commission will continue its consideration of that report next year. On the provisional application of treaties, a topic under consideration since 2012, the Commission most recently considered the fourth report of the Special Rapporteur, and has made progress on the adoption of a set of draft guidelines.

The Commission has also been considering a series of Special Rapporteur reports on the topics “protection of the environment in relation to armed conflict” and “protection of the atmosphere,” respectively. Both were added to the programme of work in 2013. The work will continue in the next quinquennium on a set of principles on the protection of the environment in relation to armed conflict, and draft guidelines on the protection of the atmosphere.

The Commission further took up the topic “crimes against humanity” in 2014, and appointed Prof. Sean Murphy (USA) as Special Rapporteur. Thus far, the Commission has considered two reports by the Special Rap-

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## Carta de Foresta

## NEWS OF AMERICAN BRANCH COMMITTEES (cont'd)

The coming year, 2017, will mark the 800th anniversary of Carta de Foresta (also known as the Forest Charter or Charter of the Commons). The Charter, which was created in 1217 when Magna Carta was reissued on behalf of the young King Henry III, is one of the world's first pieces of environmental and natural resources legislation and a progenitor in protecting commons. It contains several important forest provisions from the original (1215) Magna Carta plus many others.

Carta de Foresta had a revolutionary impact in protecting the lives and livelihoods of English commoners from encroachment by the aristocracy. For example, the Charter permitted much greater use of Royal Forests by commoners, including uses that were essential for life at that time such as collecting water, fodder, food, and fuel, effectively establishing the forests as commons in many senses. The Charter outlawed capital punishment for poaching deer and maiming for other violations of the forest law. The Charter "disafforested" large parts of the Royal Forests by rolling back their boundaries to those under Henry II, thereby negating large royal land grabs that had occurred after his reign. And the Forest Charter applied to everyone in England, whereas Magna Carta applied only to half of Englishmen.

The Charter's 800th anniversary provides a unique opportunity to celebrate the importance of forests and commons and to focus attention on the need to protect them, rule of law, and related human rights. The Library of Congress will hold a large exhibit on the Charter from January to May, 2018; and other activities are in planning stages, including creating curricular materials for elementary students. For more information, or to let him know about Charter-related activities you may be considering, contact Daniel Magraw, [dmagraw@gmail.com](mailto:dmagraw@gmail.com).

Submitted by Daniel Magraw

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legal blogs to advance participation in Committee activities and discussion of relevant international legal issues.

Although the Committee was only recently established and has not had sufficient time to embark on its full agenda, we commenced our first project this summer: a series of podcasts that will feature the work of different authors and practitioners in the field of arms control and the international use of force. This series will serve as a vehicle for interviews and discussions with people doing interesting work in this field. Each podcast will feature a discussion with a different author or practitioner, focusing on their current work or most recent publications or research. Hopefully, this will be a great way for people to learn about interesting work going on in the area, through a highly accessible medium.

Our inaugural podcast, which took place at the University of Alabama School of Law, is now posted on the ABILA Committee Use of Force page, at <http://www.ila-americanbranch.org/CommitteeDetail.aspx?CommitteeID=229>. All podcasts will be available at their home on Arms Control Law at <https://armscontrollaw.com>. We hope that ABILA members and all others interested in international legal issues related to the use of force will find this podcast series valuable. We welcome input from Committee members, and suggestions for additional Committee projects.

Submitted by Jack Beard, Chair

### **Committee on Arms Control & Disarmament**

The Arms Control & Disarmament Committee remains focused on the international law developments concerning nuclear arms issues – evolution of norms and regimes, policies, developments, control and proliferation prevention, and the overall disarmament goal—specifically as pursued by the United States, but also on the policies and responses by other major nuclear armed states, as well as the contextual conditions generated by geopolitical and transnational conflicts.

The immediate objective of the Committee Chair is to produce a new draft report on the state of the international law on nuclear weapons – primarily as practiced by the United States, though addressing elements of main comparative practice, in as much as it is interrelated with U.S. practice – in time to be debated by the Committee members, and the members at large of the Branch, by the 2016 International Law Weekend.

Submitted by Leopoldo Lovelace, Chair

## ILA Committees and Study Groups

### International Human Rights Law

In 2008, at the 73rd ILA Biennial, Prof. Christina Cerna assumed the Chair of the International Human Rights Law Committee. Her predecessor, Martin Scheinin, a former member of the UN Human Rights Committee, had chaired the ILA Committee for the previous 12 years, and the papers produced by his Committee were compiled in a book edited by Martin and Menno Kamminga, entitled *The Impact of Human Rights Law on General International Law*, published by Oxford University Press in 2009. Since Prof. Cerna had been a member of the previous Committee, the book also included a contribution of hers, "The Impact on the Right to Consular Notification."

In 2008, the ILA Executive Council approved a mandate that the new Committee produce a report on: 1) The impact of international human rights law on the International Court of Justice (ICJ), and 2) The domestic implementation of decisions and judgments of the ICJ and other international courts and tribunals that involve international human rights.



The Committee held a working session at the 74th ILA Biennial, held in The Hague in 2010. An intersessional meeting took place in Bellagio, Italy in June 2012 at the Rockefeller Foundation, another working session at the 75th ILA Biennial in Sofia in 2012, and still another at the University of Essex, Colchester, England in December

2013. At the 76th ILA Biennial in Washington (2014), the Committee presented its interim report on "International Human Rights Law and the International Court of Justice (ICJ)," the principal drafter of which was Co-Rapporteur Eva R. Rieter (Netherlands).

The Committee met again in May 2016 at the European Court of Human Rights for an intersessional meeting, at the invitation of Judge Paulo Pinto de Albuquerque, the Portuguese judge on the Court and a member of the Committee. Most recently, at the 77th ILA Biennial in Johannesburg, the Committee held a working session at the South African law firm, Bowman Gilfillan. In addition, it presented the second half of its Final Report, entitled "The Domestic Implementation of Judgments/Decisions of Courts and other International Bodies that involve International Human Rights Law," the principal drafter of which was Co-Rapporteur Stefan Kadelbach (Germany). The Resolution and Guidelines, as well as the Report, were adopted unanimously at this conference.

Submitted by Christina M. Cerna

### Committee on Recognition/Non-Recognition of States and Governments

The Committee held a session at the Johannesburg Biennial to present its third report, this one on recognition of governments (the two previous reports having covered, respectively, recognition of states and the collective non-recognition of unlawfully created situations). The session, moderated by outgoing ILA President Ruth Wedgwood (American Branch), included as panelists the Committee Chair, Wladyslaw Czaplinski

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## Report on the United Nations: The ILC Concludes Its Quinquennium (2011-2016 (cont'd))

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porteur and is scheduled to continue its work on a set of draft articles on crimes against humanity in the new quinquennium. Most recently, the Commission decided, in 2015, to include the topic "jus cogens" in its programme of work, and appointed Prof. Dire Tladi (South Africa) as Special Rapporteur. The Commission considered its first report this year, and has already commenced work on the development of a set of draft conclusions on the topic.

At this year's session, the Commission also decided to add two further topics to its long-term programme of work, from which it draws topics to be added to its annual programme of work, namely: "settlement of international disputes to which international organizations are parties" and "succession of states in respect of state responsibility".

The Commission for the next quinquennium (2017-2021) is scheduled to be elected by the General Assembly on 3 November 2016.

Submitted by Arnold Pronto, Principal Legal Officer, Secretariat of the International Law Commission, and ILA Liaison to the United Nations

### Can You Help with the Branch Newsletter?

The Newsletter is one of the best ways to communicate with Branch members about events and developments of shared interest. To contribute materials, to assist or to volunteer to be the editor, please email [abilanews@gmail.com](mailto:abilanews@gmail.com).

## ILA COMMITTEES AND STUDY GROUPS (cont'd)

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(Polish Branch), the Committee Rapporteur, Aziz Tuffi Saliba (Brazilian Branch), and Committee member Brad Roth (American Branch).

Professor Saliba summarized the Committee's report, outlining the pattern of current recognition practices (including many states' practice of withholding comment on foreign states' changes of government) and surveying domestic legal consequences of executive organs' conferrals and denials of recognition. Professor Roth gave a commentary on the need for an alternative conceptual framework, highlighting the inevitable international legal consequences of determinations – whether explicit or implicit – by states and intergovernmental organizations of a putative government's standing to assert rights, incur obligations, and confer immunities on behalf of the state in question. Audience participants in the ensuing discussion included Committee member Christopher Waters (Canadian Branch), Anna Czaplinska (Polish Branch), and Arnold Pronto (United Nations Legal Officer).

Submitted by Brad Roth

### Global Health Law Committee

This Committee presented its first report at the Johannesburg Biennial on Tuesday, August 9, 2016. The draft report was made available on the ILA Headquarters website, and was adopted by the Committee at the conclusion of its open session.

The report details the work of the Committee up to the Biennial, including organization of a meeting on Global Health Security in February 2015; preparation by members of two submissions to the UN Secretary General's High Level Panel on Access to Medicines (HLP) in the Spring of 2016, and participation in hearings and dialogues of the HLP in London and Johannesburg; preparation of a study on access to global health research materials, including biological materials; and, a report on international standard-setting in pharmaceuticals.



The submissions to the HLP addressed mechanisms to improve access to patented essential medicines, and a proposal for a Framework Convention on Pharmaceutical Innovation (and optional protocols). Co-Chair Prof. Frederick Abbott introduced the new Committee and its mandate, and discussed the HLP submission on access to essential medicines, authored mainly by Co-Rapporteur Ellen 't Hoen and Co-Chair Prof. Brigit Toebes. Committee Member Dr. Ruth Atherton outlined the report on access to research materials, which she co-authored with Committee Members Prof. Gian Luca Burca and Dr. Helene De Pooter.

Co-Rapporteur Prof. Xavier Seuba addressed the second submission to the HLP regarding a Framework Convention, as well as the study on international standard-

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## TWENTY-FIVE YEARS AGO AT THE AMERICAN BRANCH

Legal responses to Iraq's 1990 invasion of Kuwait drew significant attention at the American Branch's International Law Weekend, held October 31 - November 2, 1991, at the Association of the Bar of the City of New York. The opening panel, chaired by Professor Richard Lillich of the University of Virginia School of Law, concerned "Claims Against Iraq Arising from the Gulf War." Speakers included Judge Charles N. Brower, a former member of the Iran-U.S. Claims Tribunal; Stanley Glod, Chair of the U.S. Foreign Claims Settlement Commission; and Michael J. Matheson, Deputy Legal Adviser at the U.S. State Department.

Ambassador Thomas Pickering, the Permanent Representative of the United States to the United Nations, spoke at the American Branch's annual dinner, held in the Delegates Dining Room at the United Nations Headquarters Building on November 1, 1991. Pickering offered candid comments about the fashioning and significance of Security Council resolutions responding to the Iraqi invasion. See 1991-1992 *Proceedings and Committee Reports of the American Branch of the International Law Association* 18 (available in the Foreign and International Law Resources database of Hein Online). On November 2, McGeorge Bundy, Professor Emeritus at New York University and former National Security Advisor to the President of the United States, addressed the American Branch's annual luncheon. In the course of his comments on the challenges of nuclear arms control, Bundy also touched

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## ILA COMMITTEES AND STUDY GROUPS (cont'd)

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setting. He is author of both. ILA members at the open meeting made a number of useful comments and suggestions mainly directed at the potential future work of the Committee. There was an engaging dialogue between the presenters and attendees at the open session.

Committee members at the Biennial held a closed working meeting that same afternoon, hosted at the nearby offices of one of the meeting sponsors, the law firm Bowman Gilfillan. Future work and meeting plans for the Committee were discussed.

A good part of the early work of the Committee has been devoted to global health security, including responses to epidemics and pandemics, and challenges involving access to biological materials and viruses. The initial work of the Committee was undertaken in the shadow of the Ebola epidemic that demanded worldwide attention in 2014-15. Emergence and spread of the Zika virus in 2016 is a sharp reminder that global health security challenges arise continuously and require systematic response. The work associated with the High Level Panel illustrates a growing global level of concern with the sustainability of national healthcare systems in the face of escalating costs, and what may be done to address this concern. The report of the HLP was due to be completed by the end of June 2016, but as of the time of the Biennial had not been completed. This naturally limited the extent to which the Committee could address the results of the HLP's efforts!

Submitted by F.M. Abbott

### ILA Committee on International Investment and the Rule of Law

Chair: August Reinisch, University of Vienna; Co-Rapporteurs: Andrea K. Bjorklund, McGill University and Andreas R. Ziegler, University of Lausanne

The Committee had its first meeting at the ILA Biennial in Johannesburg in August 2016. It became clear during the discussion that conceptions of what the "rule of law" is vary widely, both in domestic law and in international law contexts. After a lively open meeting with many suggestions from the audience, the Committee in closed session (nine Committee members were present) to formulate its working plan. Based on comments received at the open meeting, the members discussed the advisability of having a preliminary research stage focusing on the concept of "the rule of law" itself, prior to undertaking (or in parallel with) research addressing more precisely how investment law contributes to, and sometimes detracts from, the rule of law. That stage will encompass a comparative law exercise to provide input on the way that domestic jurisdictions approach the "rule of law" concept, as well as an "international law" exercise to identify how it is used in various international contexts. The Committee's next meeting will take place in Vienna in Spring 2017.



Submitted by Andrea K. Bjorklund

After the ILA Biennial David Stewart and Andrea Bjorklund, with their respective spouses, went on safari in the Sabi Sands game reserve.

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## TWENTY-FIVE YEARS AGO AT THE AMERICAN BRANCH (cont'd)

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on problems in the Middle East and the roles of the U.N. Security Council. See *id.* at 32.

International Law Weekend 1991 was the eighteenth such conference since ILW was inaugurated in 1974. ILW 1991 featured six panels in addition to the opening panel on Gulf War claims: "The Multinational Law Firm in the 1990s," organized by the American Foreign Law Association; "Non-Proliferation of Weapons Technology"; "Eastern Europe: The Problems of Economic Development and Human Rights"; "Practical Considerations in International Business Transactions"; "South Africa: Constitutional and Political Developments"; and "Trade Sanctions: Are They Effective?." 1991 marked the start of what has become an ILW tradition: holding the opening panel on Thursday evening in the Great Hall of the Association of the Bar of the City of New York. ILW was to grow dramatically during the next five years, by 1996 offering thirty-two panels.

In other news of note, American Branch President Cynthia Lichtenstein announced in September 1991 that Professor Jim Nafziger of Willamette University College of Law and Professor Al Rubin of the Fletcher School of Law and Diplomacy were appointed as Co-Directors of Studies, with responsibility for oversight of the work of Branch committees. They replaced Professor Ed Gordon. See *Newsletter*, Issue No. 38, Sept. 1991, at 2 (available at [http://www.ila-americanbranch.org/newsletters/199109\\_ABILA\\_NEWSLETTER.pdf](http://www.ila-americanbranch.org/newsletters/199109_ABILA_NEWSLETTER.pdf)).

Submitted by John Noyes

## ILA COMMITTEES AND STUDY GROUPS (cont'd)

(Continued from page 14)

### Committee on Baselines under the International Law of the Sea

The Committee on Baselines under the International Law of the Sea met at the ILA Biennial Conference in South Africa to finalize work on its Second Report concerning straight baselines. This Report will be posted in its final form on the Committee's website (<http://www.ila-hq.org/en/committees/index.cfm/cid/1028>).

The Committee was formed in 2012 and was originally given a four-year mandate. However, as explained in the Second Report, the Committee has sought a two-year extension of its mandate. The extension was sought in order to review state practice more completely, consider the potential for dispute settlement of baseline disputes, analyze the potential impact for the Committee's work of the decision by the Philippines v. China Annex VII arbitral tribunal on South China Sea issues, and assess the distinctions among islands, rocks, and low-tide elevations. The ILA Director of Studies, Professor Marcel Brus, has supported an extension of the Committee's mandate, and the issue will be placed before the ILA Executive Council for its endorsement. As noted in its Second Report, the Baselines Committee has "also agreed to continue to explore ... 1. The interpretation of Article 7(2) with respect to deltas and unstable coastlines; 2. The meaning of 'main islands' in Article 47(1); 3. The legal consequences arising when the status of an archipelagic State and that State's capacity to proclaim archipelagic baselines is disputed; and 4. The significance and relevant state practice with respect to Article 50 and the drawing of closing lines for the delimitation of internal waters within an archipelagic State."

The Committee Chair, Capt. J. Ashley Roach, has proposed upcoming inter-sessional Committee meetings in Oslo in September 2017, in Washington, DC in April 2018, and in Singapore at a date to be determined.

Submitted by John Noyes

### Study Group on Content and Evolution of the Rules of Interpretation.

Dean Charlotte Ku chaired the open meeting of this Study Group, at which time members had a productive discussion on the scope of the proposed study. The Executive Council gave a two-year mandate to continue their work.

Submitted by Charlotte Ku

### Teaching International Law Interest Group

The Teaching International Law Interest Group met in Johannesburg and discussed several papers probing the challenges of teaching international law in the political environment of South Africa (Annelize Nienaber), in the more visual world of millennial learners (John Gamble), and with the more nationally focused educational and professional backgrounds of U.S. international law teachers (Charlotte Ku). The Interest Group further discussed activities that might be undertaken to engage more of the membership including the possibility of a professional LinkedIn group.

Submitted by Charlotte Ku

## Conference "International Conflict of Laws and the Third Restatement"

### Duke Law School

Nov. 4-5, 2016

In 2000, Prof. Mathias Reimann criticized the Second Restatement of Conflict of Laws for being "largely blind to international concerns." He argued that the next Restatement of Conflict of Laws must be attentive to such issues and should "come with an implied (or better yet express) warranty that all its principles and rules are fit for international use as well [as for domestic use]."

Work on the Third Restatement is now underway, and it is time to give careful thought to Professor Reimann's call for a genuinely international restatement.

The Duke Journal of Comparative and International Law will host a symposium on "International Conflict of Laws and the Third Restatement" at the Duke University School of Law in Durham, North Carolina, on Nov. 4-5, 2016. It will feature all three reporters of the 3rd Restatement: Laura Little, Kermit Roosevelt III and Christopher Whytock.

Speakers will include Patrick Borchers, Hannah Buxbaum, Donald Earl Childress III, Ann Laquer Estin, Richard Fentiman, Ralf Michaels, Horatia Muir Watt, Mathias Reimann, Linda Silberman, Symeon Symeonides, Louise Ellen Teitz, and Christopher Whytock.

For further information, see <http://djcil.law.duke.edu/symposium/>.



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