



INTERNATIONAL LAW ASSOCIATION  
AMERICAN BRANCH  
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ILA — Founded 1873  
Branch Newsletter: Issue # 104— Fall 2018

# NEWSLETTER

American Branch of the International Law Association

September 2018

## INTERNATIONAL LAW WEEKEND 2018

### “WHY INTERNATIONAL LAW MATTERS”

The fall International Law Weekend – a joint effort of the International Law Students Association (ILSA) and the American Branch of the International Law Association (ABILA) - will be held at Fordham University School of Law in New York City October 18-20, 2018. Registration is open. The program can be viewed at <https://www.ila-americanbranch.org/ilw/>.

The Opening Session on Thursday evening, October 18, will feature a talk by Professor Harold Koh (Yale Law School) on “The Current Administration's Approach to International Law.” A reception will follow, generously sponsored by Debevoise & Plimpton LLP.

The conference continues Friday and Saturday, October 19-20, with nearly 40 panels and presentations. Friday's activities feature a Keynote Address by Professor Sean Murphy (George Washington University Law School) entitled “The United States and International Law in the 21st Century.”

On Friday evening, a reception will be generously hosted by the Permanent Mission of Estonia to the United Nations. Pre-registration and pre-payment is required for this event.

As in the past, a number of panels have been designated for continuing legal education (CLE) credit. CLE credit will be offered to all ILW attendees at no additional cost through the sponsorship and assistance of White & Case LLP, which is an accredited provider of New York and California CLE credit. Attorneys licensed in other states can apply for CLE credit in their own jurisdiction using the New York CLE certificate provided by White & Case.

### In This Issue

- Report on ILA Biennial 2018
- News of ILA and Branch Committees
- Calendar of Events
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### ANNUAL MEETINGS OF ABILA MEMBERS AND BOARD OF DIRECTORS

The annual meeting of ABILA's membership will take place at ILW on **Saturday**, October 20, at 12:30 pm. All members (and all interested in becoming a member) are urged to attend. Members will elect the new Branch Officers and at-large members of the Branch's Board of Directors.

The semi-annual ABILA Board of Directors Meeting will be held at ILW2018 on **Friday**, Oct. 19 at 12:30 p.m.



Join the Branch On-Line  
at [www.ila-americanbranch.org](http://www.ila-americanbranch.org)

**BECOME A NEW  
MEMBER**

## SAVE THE DATE!!

### INTERNATIONAL LAW WEEKEND-MIDWEST

MARCH 16, 2019

**“THINGS FALL APART OR CREATIVE DESTRUCTION?: THE FUTURE OF THE RULE OF LAW IN INTERNATIONAL GOVERNANCE”**

#### UNIVERSITY OF DAYTON LAW SCHOOL

The University of Dayton School of Law and the University of Dayton Human Rights Center (with ABILA's cosponsorship) will host a conference on March 16, 2019, focusing on a key question: Are we in an era of transition in international governance from one stable state to another or are we in an era where the fundamental norms and rules have begun to fall apart to be replaced by pure power politics?

We can see this issue in increasing unilateralism in international trade; the retreat from enforcement into voluntarism in international climate treaties; the increasing exercise of unilateral military force in interventions by major powers in domestic conflicts; and the challenge to international humanitarian law by increasing refugee and migrant flows into developed countries. Might the current unstable and fluid relationship to the rule of law in international relations provide space for new entrants and new solutions rather than be a retreat from law?

Please save the date and join us at University of Dayton School of Law (Law School Courtroom, Keller Hall) with our Keynote speaker Justice Carlos Bernal of the Constitutional Court of Colombia. Justice Bernal will address the situation of Colombia which has just emerged from one of the longest running domestic and transnational conflicts in recent memory. He will discuss the conflict, the peace process and its aftermath which pose unique problems for a Constitutional Court, especially one in a country in which the international actors have historically played a large role in domestic outcomes.

## ICJ ELECTION

On June 22, 2018, Professor Yuji Iwasawa, a Vice Chair of the International Law Association and Professor of International Law at the University of Tokyo, was elected to the International Court of Justice, the principal judicial organ of the United Nations. Judge Iwasawa fills the vacancy left by the resignation of Judge Hisashi Owada. He will hold office for the remainder of his predecessor's term (until February 5, 2021).



### Recruit New Members

Every ABILA member is urged to recruit at least two new members during the coming year. The health and success of our Branch depends of a steady infusion of new talent, enthusiasm, and energy. Please take some time, now, to reach out to several likely prospects – including students, practitioners, academics, and other colleagues, encouraging them to join, to attend ILW, to become active in Branch committees and study groups, and to sponsor local and regional events.

## Welcome



### WELCOMING NEW BRANCH MEMBERS

We offer our heartiest greetings to the following new members of our Branch who have joined in 2018. We're glad to welcome you!

Barry Appleton  
Juliya Arbisman  
Kent Bressie  
Jocelyn Burgos  
Christopher Casey  
Richard Charlton  
Kathleen Claussen  
Heather Craig  
Ay Cuzzolino  
Janelle Diller  
Ana Duran  
Yvonne Dutton  
Brian Egan  
Mai El-Sadany  
Yasmina Gourchane  
Murray Henner  
John Hepp  
Margie-Lys Jaime  
Anil Kalhan  
Arlene Kanter  
Julianna King  
Amelia Landenberger  
Alice Leonard de Juvigny  
Lucinda Low  
Jena Martin  
Tina Minkowitz  
Alexander Moorehead  
Nicholas Mull  
Bibi Musafiri  
Godfrey Musila  
Elida Nogoibaeva  
Stella Cbita  
J. Janewa OseiTutu  
Carlos Pagan  
Jeanette Panning  
Tafadzwa Pasipanodya  
Panida Pollawit  
Marny Requa  
William Rodgers, Jr  
Theresa Roosevelt  
Brittany Roser  
Jolie Schwarz  
Richard Steinberg  
Daniel Stewart  
Peter Tzeng  
Maria Vanikiotis

## **THE 2018 ILA BIENNIAL IN SYDNEY**

The International Law Association's 78<sup>th</sup> Biennial Conference was hosted by the Australian Branch at the Inter-Continental Hotel in Sydney August 19-24, 2018. The event was very well attended by members of branches from around the world and featured four full days of substantive panel discussions as well as open and closed meetings of ILA committees and study groups (all told, more than 70 such events).

In addition there were presentations by an impressive array of officials and dignitaries (including the Australian Attorney-General and the Chief Justices of the Australian Federal Court, the High Court of Australia, the Supreme Court of New South Wales, and ICJ Judge James Crawford), and of course a variety of very collegial social events.

The American Branch of the International Law Association was well represented at the Biennial. Our intrepid correspondents report spotting the following ABILA members: Frederick Abbott, Michael Addo, Jose Alvarez, Ruth Atherton, Thomas Baxter, Andrea Bjorklund, Christina Cerna, Paul Dubinsky, Robin Frank, David Freestone, John Gamble, David Gross, Meridith Lewis Kolsky, Charlotte Ku, Coalter Lathrop, George Anthony Long, Cristina Mariottini, Stephen Marks, Lucy Martinez, Sean Murphy, James Nafziger, Mary Ellen O'Connell, Ash Roach, Elizabeth Rodriguez-Santiago, Brad Roth, David Stewart, Louise Ellen Teitz and Peter Yu.

Many of our members participated in substantive panels and committee meetings, and our own Prof. Mary Ellen O'Connell (University of Notre Dame) gave a most challenging and thought-provoking keynote at the conference's concluding dinner on "The Art of Law in the International Community."



## **ILA EXECUTIVE COUNCIL MEETINGS**

The Executive (Full) Council held two meetings during the Sydney Biennial.

The first meeting took place at the outset of the conference on Monday August 20, presided over by the Association's Chair, Rt. Hon. The Lord Mance, and Vice-Chairs Yuji Iwasawa (Japanese Branch), Catherine Kassedjian (French Branch), James Nafziger (American Branch), and David Wylid (UK Branch).

The first item of business was to elect the new President (in accordance with tradition, Dr. Christopher Ward SC, President of the Australian Branch was elected) and hear brief reports from the Honorary Treasurer and the Director of Studies as well as on the final conference preparations.

The Council also noted that several well-known ILA members had died since the immediately preceding biennial in 2014: Robert von Mehren, Sir Nigel Rodley, Ronald Briggs, and Prof. Tsvetana Kamenova. Branch President Stewart represented the Branch at this meeting.

At the second meeting, the Council heard a report from Director of Studies Marcel Brus on the working session of the conference and adopted a number of resolutions. Several ILA Committees were dissolved, having submitted their reports and completed their mandates: the Committees on Baselines under the International Law of the Sea, Feminism and International Law, Recognition and Non-Recognition in International Law, Use of Force, and Islamic Law and International Law. The Study Groups on Business and Human Rights and on Use of Domestic Law Principles for the Development of International Law were similarly dissolved.



On the basis of a report from the Committee on International Law and Sea Level Rise, the Council adopted the Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise and asked the ILA's Secretary-General to forward the resolution to the UN Secretary-General and others for their consideration, and extended the Committee's mandate so it could continue its work on this topic.

A short presentation was made by the Japanese Branch on preparations for the 80th ILA Biennial in Kyoto (August 23-27, 2020). The Council also introduced, and heard brief statements from, the various younger scholars from the Asia-Pacific region whose participation in the Biennial was supported by contributions from member Branches (ABILA provided a \$3500 donation for this purpose).

## NEWS OF ILA COMMITTEES

At the Sydney meeting, the **ILA Committee on Recognition/Non-Recognition in International Law** concluded its eight-year project with the presentation of its final Report. Professor Brad Roth (Wayne State University), one of the Committee's three ABILA representatives, presented the Report for approval at the Committee's Open Meeting, attended also by Committee members Professor Chun-i Chen (Chinese (Taiwan) Branch), Professor Shotaro Hamamoto (Japanese Branch), and Dr. Alison Pert (Australian Branch).

Although unable to be present at the meeting, ABILA member Christopher Borgen (Professor, St. John's University) served ably as the Committee's Co-Rapporteur, with a leading role in the drafting of the Report. The ILA plenary session adopted a resolution noting the Report's principal conclusions about the current state of international law in regard to recognition of states, recognition of governments, and collective non-recognition of unlawfully created entities and situations. Submitted by Prof. Brad Roth.

The **ILA Committee on Participation in Global Heritage Governance** conducted four activities during the Sydney conference. Its project addresses the definition and role of communities, indigenous and otherwise, that are or should be instrumental in the global protection of the cultural heritage. Preliminary questions involve the problem of defining pertinent communities and the concept of participation; the bases for recognizing significant individuals in some cases; the role of international human rights law; the applicability of other international instruments and law; the feasibility of national and regional parameters, variations and subsidiarity; and the structural complexities of comprehensive governance.

This four-year project is an outgrowth of the work of the ILA's Committee on Cultural Heritage Law, which in its 28 years (1988-2016) became one of the two longest-tenured committees of the ILA. Members always referred to themselves as "La Fami(g)lia." Its work product included two draft treaties (one of which, as revised and opened for signature by UNESCO, is in force), a book, several sets of Guiding Principles, a model contract for establishing safe havens in the face of armed conflict, and numerous resolutions and reports.

In Sydney the able Chair, Andrzej Jakubowski (Polish Branch) and Rapporteur Lucas Lixinski (Brazilian Branch) of the reconstituted Committee organized a dinner that had become an annual affair of the cultural heritage law committee at ILA conferences and intersessional meetings, a three-hour symposium on related governance issues at the University of Technology Sydney, a closed (Committee-members-only) planning session, and an open session attended by some 12 Committee members and as many non-members. The Committee's project is already in high gear. Submitted by Prof. James Nafziger

The **ILA Committee on the Procedure of International Courts and Tribunals** has had a busy and highly productive year. The Committee operates under a twofold mandate: 1) to identify and analyze procedural issues arising in the practice of inter-State international courts and tribunals; and 2) to formulate proposals for procedural reform for the consideration of those courts and tribunals. The Committee has focused on three broad areas of procedure: 1) case management; 2) jurisdictional objections; and 3) evidence.

To date, the Committee has focused its work on four fora: the International Court of Justice, the International Tribunal for the Law of the Sea; inter-State arbitration, particularly under the auspices of the Permanent Court of Arbitration (PCA); and the World Trade Organization Dispute Settlement System. The U.S. members of the Committee are Professor Chiara Giorgetti of the University of Richmond School of Law, and Professor Jeffrey L. Dunoff of the Temple University Beasley School of Law.

As of September 1, 2018, the Committee's primary work product consists of a draft report. This report underwent a second reading at a meeting on March 16 and 17, 2018, at the Max Planck Institute for Procedural Law in Luxembourg. Professors Giorgetti and Dunoff actively participated in the deliberations over this report, and the current



### PLAN NOW

#### **ILA 2020 BIENNIAL**

The 79th Biennial ("Bridging for the Future") will take place in Kyoto from August 23-27, 2020.



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draft reflects many of their comments and suggestions. The report was forwarded to ILA Headquarters on May 1, 2018, for submission to the Sydney Conference.

The Committee presented its interim report in an Open Working Session to the entire ILA membership at the Sydney Conference; the Committee then met privately to consider the constructive comments and feedback received, and to plan its agenda for the upcoming year. The current version of the report can be accessed on the ILA website. Members with any questions or suggestions regarding the Committee's work should free to contact Professor Giorgetti or Professor Dunoff. Submitted by Jeffrey L. Dunoff and Chiara Giorgetti

The **ILA Global Health Law Committee** (co-chaired by ABILA member Prof. Frederick M Abbott (pictured below on top of Sydney Harbor Bridge) and Prof. Brigit Toebees from the Netherlands) held a public session at the Sydney Biennial on August 21, 2018. The Co-Chairs briefly outlined the substance of their Report, which was followed by substantive presentations addressing the identification and development of general principles of global health law (Prof. Toebees), the relationship between global health law and international environmental law (Dr. Pedro Villarreal), and transparency as a principle of global health law (Prof. Abbott). The working session was well attended by non-members, and useful ideas for future work of the Committee emerged from interventions by those participants.

The suggestion was made that the Committee might further explore the rule system governing collection and use of health data involving potential scientific benefits (e.g. AI-assisted R&D) and interference with rights of personality, privacy and related discrimination issues (e.g., insurance coverage). Data flows are often trans-border, and this points to an important international legal dimension that might be taken up by the Committee.

There was substantial consensus that public health concerns (i.e., the effects) are an increasingly important dimension of environmental impacts and that while international law has tended to focus on environmental causes, there is room for exploring the legal implications of public health effects (e.g., a precautionary principle with respect to health). The Committee organize a "side event" on Tuesday afternoon discussing the WTO Tobacco Panel Report.



In June 2018, a WTO dispute settlement Panel issued a Report on the complaints filed with respect to Australia's Tobacco Plain Packaging (TPP) legislation by Cuba, the Dominican Republic, Honduras and Indonesia. The Panel rejected all claims of WTO inconsistency in an 880+ page decision. There were two main sets of claims, those under the Agreement on Technical Barriers to Trade (TBT Agreement), and those under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

The **Global Health Law Committee** also organized an expert panel to assess the Panel Report. This was a timely and "geographically appropriate" occasion given Australia's central role in the dispute, and we were fortunate to include among the panelists several individuals who directly participated in the dispute settlement process, both from a legal and scientific angle. The Sydney panel was comprised of Jonathan Liberman (McCabe Centre for Law and Cancer, Australia), Edward Kwakwa (World Intellectual Property Organisation, Switzerland), Natasha Spisbah (Department of Foreign Affairs and Trade, Australia), Prof. Brigit Toebees (University of Groningen, Netherlands) and Prof. Tania Voon (University of Melbourne, Australia).

One interesting question discussed by the panelists was whether the tobacco producers enjoyed some success by virtue of the six-year time span for issuance of the Panel Report, exceeding WTO procedural rules by five years (though somewhat less by customary practice), thereby managing to delay adoption of similar TPP legislation by other countries. Opinions were mixed on that point, with some expressing the view that after about two years countries contemplating new legislation had stopped worrying about the WTO. Others thought that there were concrete examples of government delays awaiting the outcome. The case illustrated the complex science surrounding smoking cessation, and the importance of a multipronged approach to reducing tobacco use. It demonstrated that the TBT Agreement is not a "model of clarity," particularly regarding some rules surrounding burden of proof, and the disputing parties spent considerable time debating which WTO Member had the burden, and what were the potential consequences of burden shifting. Considerable attention was paid to the WTO Panel determination that the WHO Framework Convention on Tobacco Control did not constitute a "relevant international standard" for purposes of establishing a rebuttable presumption that Australia's legislation did not constitute an unnecessary obstacle to trade and whether that determination raised questions about the WTO's approach to public health matters.

On the TRIPS Agreement, the "main" question was whether Australia's TPP legislation "unjustifiably" encumbered the rights of trademark owners. Again, the WTO Panel reached the right (i.e. no) result, but there was some discussion in Sydney about the multi-part analytic framework employed. Interestingly, the complaining countries generally conceded that the TRIPS Agreement does not establish a "right to use" trademarks yet sought in various

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to infer positive from otherwise negative rights. The WTO Panel rejected those efforts.

An appeal of the Panel Report was initiated by the time of the Sydney Biennial (Honduras, more recently followed by Dominican Republic), and Prof. Voon discussed the issues raised in the Honduras appeal filing. A number of insightful interventions were made from the floor as part of the follow-on Q & A. Submitted by Frederick M. Abbott

The **ILA's Baseline Committee**, under the chair of American Branch member Captain J. Ashley Roach, completed its work at the Sydney Biennial. It adopted a lengthy report on straight baselines and other straight lines (articles 7, 8(2), 10, 13, 14 and 47 of the Law of the Sea Convention) and a resolution summarizing its conclusions and recommendations. This report complements the earlier work of the Committee on the normal baseline (article 5) adopted at the 2012 Sophia Conference. Together these two reports are a comprehensive examination of the baseline issues in the law of the sea.

The conference adopted in Resolution 1/2018, **the Sydney Conclusions on Baselines under the International Law of the Sea**. The 12 conclusions focused on articles 7, 8, 10, 14 and 47, as well as baselines surrounding offshore archipelagos not qualifying as archipelagic states. One conclusion noted that the practice of states with respect to disputes regarding straight or archipelagic baselines predominately relies upon diplomatic means rather than the formal means for dispute settlement found in the Law of the Sea Convention or general international law.

Also at the Sydney Conference the **ILA Sea Level Rise Committee** submitted an interim report on the law of the sea and migration issues consequent to significant sea level rise, particularly for low lying island states. On the law of the sea issues the committee identified various means by which the maritime zones could be maintained notwithstanding the significant retreat landward of the low water line caused by sea level rise. By Resolution 5/2018 the Conference endorsed the proposal of the Committee that, on the grounds of legal certainty and stability, provided

that the baselines and outer limits of maritime zones of a coastal or archipelagic state have been properly determined in accordance with the 1982 Law of the Sea Convention, the baselines and limits should not be required to be recalculated should sea level rise change affect the geographic reality of the coastline.

Resolution 5/2018 also endorsed the Committee's proposal that the interpretation of the 1982 Law of the Sea Convention in relation to the ability of coastal and archipelagic States to maintain their existing lawful maritime entitlements should apply equally to maritime boundaries delimited by international agreement or by decisions of international courts or arbitral tribunals.

At its 2018 meeting, the International Law Commission (one member of which is also a member of the Sea Level Rise Committee) agreed to form a study group to address these issues. The syllabus of this topic is available as Annex B to the ILC's Annual Report, A/73/10, at [http://legal.un.org/docs/?path=../ilc/reports/2018/english/a\\_73\\_10\\_advance.pdf&lang=E](http://legal.un.org/docs/?path=../ilc/reports/2018/english/a_73_10_advance.pdf&lang=E).

The Biennial Conference also adopted Resolution 6/2018 ("**the Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise**," prepared by the Committee). The Declaration provides guidance to states in averting, mitigating, and addressing displacement of persons in the context of sea level rise, based on and derived from relevant international legal provisions, principles and framework. The Committee had begun considering the issues of statehood and international law personality in the case of total loss of state territory or becoming permanently uninhabitable. The Committee's work likely will continue for another four years, to enable a closer focus on these fundamental issues as well as other related matters, including, especially, transitional issues and how to deal with diminishing statehood as a process.

The texts of all the resolutions adopted by the 78th ILA Conference are available at <http://ila-hq.org/index.php/resolutions-passed-at-the-ila-78th-biennial-conference>.

Finally, it is expected that at its November meeting the ILA's Executive Coun-

cil will approve establishment of a new committee will be established to address issues related to **submarine cables and pipelines**.

The committee is expected to be chaired by Ambassador Marie Jacobsson (Sweden); Mrs. Tara Davenport (Singapore) will serve as rapporteur.

ABILA members interested in participating in this work should inform the Branch president. Submitted by Ash Roach.

### Patrons of the American Branch

Our thanks to the following Branch Patrons. To join the list, contact our Treasury Houston Putnam Lowry.

Charles N. Brower  
Lee Buchheit  
David D. Caron  
(deceased)  
Christina Cerna  
Edward Gordon  
Anthony Larson  
Cynthia Lichtenstein  
Houston Putnam Lowry  
John F. Murphy  
James A.R. Nafziger  
Ved Nanda  
Andre Newburg  
John E. Noyes  
Anibal Sabater  
Charles D. Siegal  
(deceased)  
David P. Stewart  
Ruth Wedgwood



Join the Branch on  
Twitter

Our "handle" is:  
**@theABILA**

The ILA's Committee on the Protection of Privacy in Private International Law and Procedural Law submitted an interim report to, and held both open and closed meetings at, the Biennial to continue work on its report aiming at a framework for the effective protection of privacy and personal data rights in a cross-border context. Branch member Dr. Cristina Mariottini, Co-Rapporteur of the Committee, made a presentation; ABILA members Louise Ellen Teitz and David Stewart participated.

#### Update on Branch Website

Mark Cuevas

The updated ABILA website went live in early 2018. It brought extended functionality to registered users and a more streamlined back-end administrative section. The administrative section allows for de-centralized management of the ABILA membership and more efficient reporting to our parent organization, the ILA. It also provides dynamic graphs for year-to-year membership (over a 10-year period), month-to-month membership totals (over a single year), location-based membership tracking (by state), gender ratio by year, and much more.

For the end-user section, we added blog functionality for all the ABILA committee members and additional functionality for news and events. We hope to add a great deal more content over the next year and to engage our members in a more comprehensive way. We want to hear what our members are doing in the field of international law and to share their stories with the greater ILA community.

PLEASE REMEMBER TO PAY  
YOUR DUES

[http://ila-americanbranch.org/  
Membership.aspx](http://ila-americanbranch.org/Membership.aspx)



## American Branch Committees

The **Space Law Committee** is organizing a panel at ILW2018, titled "Free Form Treaty Interpretations' Last Stand: Why Vienna Convention Treaty Interpretation Rules Matter More than Ever in the Outer Space Domain." The panel will include Gabriel Swinney from the U.S. State Dept. Legal Adviser's Office. The panel will be examining current space law debates over new space activities that too often ignore or place too little reliance on Vienna Convention on Law of Treaties' treaty interpretation rules.

The Space Law Committee is also co-sponsoring (along with the Use of Force Committee) the University of Nebraska's 11th Annual Washington, D.C. Space Law Conference on Sept. 21st at the National Press Club. Committee Co-Chair Matthew Schaefer's article entitled "*The Contours of Permissionless Innovation in the Outer Space Domain*," 39 U. Pa. J. Int'l L. 103 (2017), makes several recommendations that have been incorporated into the draft American Space Commerce Free Enterprise Act, a bill passed by the House, as well as other recommendations that have been ignored.

The Space Law Committee is engaged in monitoring the companion Senate bill (S. 3277) that passed the Senate Commerce Committee and will see if further legal analysis can assist in facilitating a harmonized bill that ensures the United States meets its international obligations while furthering commercial activities. Submitted by Prof. Matthew Schaeffer.

Members of the **Human Rights Committee's** Subcommittee on U.S. Compliance with IHRL are preparing to submit an amicus brief to the Ninth Circuit in *Ms. L v. ICE*. The brief is being prepared on behalf of several human rights NGOs, including Amnesty International. That case is at the center of the legal debate on the President's authority to separate immigrant children from their parents through the "zero tolerance" policy adopted in May.



In 2017 and 2018, the Subcommittee filed amicus briefs in numerous cases relating to the immigration ban adopted by the Trump Administration targeting several Muslim countries in 2017. The last brief was filed in the Supreme Court, in *Hawaii v. Trump*, Docket No. 17-965. On June 26, 2018, the Court held by a 5-4 majority that the President has constitutional and statutory authority to issue a discriminatory immigration ban on asylum-seekers and visa applicants if he mentions a national security concern in the proclamation. The Court entirely ignored international human rights law issues raised in the Subcommittee's brief. Because the Court's decision exhausts local remedies, Subcommittee members are now preparing a petition to the Inter-American Commission on Human Rights regarding human rights violations caused by ban.

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The ILW 2018 roundtable, entitled “Planting Grassroots Human Rights,” deals with the lack of widespread public knowledge of international human rights around the world and their relative absence from policy debates. Under the leadership of Prof. Leila Sadat, the Subcommittee is coordinating with the Whitney R. Harris World Law Institute at Washington University to explore ways to influence the U.S. government to comply with its human rights obligations respecting private gun violence. It submitted testimony to the Inter-American Commission on Human Rights in February.

On Nov. 2-3, the Harris Institute will be holding a conference on gun violence and human rights. The November 2 panels are open to the public, and members are encouraged to attend, ask questions, and make suggestions. More information is available on the Institute's website: <http://law.wustl.edu/events/master/index.php/event/interdisciplinary-and-human-rights-approaches-to-the-gun-violence-crisis-in-the-u-s/>.



### **UN Watch: Sixth Committee of the UN General Assembly to meet in October**

The Sixth (Legal) Committee of the General Assembly will hold its annual (73rd) session from October 3 to November 13, 2018, at United Nations Headquarters in New York.

This year, the Committee will continue with its work on a comprehensive convention to combat international terrorism and revert to the possibility of developing an international instrument on the criminal accountability of United Nations officials and experts on mission.

It will also take up its annual debate on the rule of law at the national and international levels, as well as on the administration of justice at the United Nations, and conduct its biennial review of the status of the Additional Protocols to the Geneva Conventions of 1949, and the question of the protection of diplomats. In addition, it will consider whether to accept the recommendation of the International Law Commission (ILC) to conclude a convention on the basis of the draft articles on the protection of persons in the event of disasters, adopted by the ILC in 2016.

The Committee has also been allocated a new agenda item entitled “Strengthening and promoting the international treaty framework,” by which it will seek to review the regulations giving effect to Article 102 of the Charter of the United Nations, concerning the registration of treaties, which were last reviewed in 1978.

As usual, the Sixth Committee will consider the annual reports of several subsidiary bodies of the General Assembly, including the Committee on Relations with the Host Country, the Special Committee on the Charter of the United Nations (which this year commenced an annual debate on the modes for the peaceful settlement of disputes identified in Article 31 of the Charter), and the Advisory Committee on the UN's Programme of Assistance in International Law.

The Committee will also have before it several new texts developed by the United Nations Commission on International Trade Law (UNCITRAL), including a draft convention on international settlement agreements resulting from mediation.

The high level segment of the Sixth Committee's annual session is scheduled to take place during “International Law Week” (October 22-26), at which time it will take up the annual report of the ILC.

This year the ILC (which celebrated its 70th anniversary) concluded its work on two sets of draft conclusions, dealing with subsequent agreements and subsequent practice, as well as the identification of customary international law, respectively. It is also concluded its first reading on draft guidelines on the protection of the atmosphere, and the provisional application of treaties, respectively. Work continued on the immunity of state officials from foreign criminal jurisdiction, peremptory norms of general international law (*jus cogens*), the protection of the environment in relation to armed conflict, and the succession of states in respect of state responsibility. Work on a new topic, “general principles of law”, is scheduled to commence next year. The ILC further added the following two topics to its long-term programme of work: “universal criminal jurisdiction” and “sea-level rise in relation to international law.”

More information on the work of the Sixth Committee, including links to the various reports under consideration, statements by governments and to the live webcast of all its plenary meetings, is available on the Committee's website at <http://www.un.org/en/ga/sixth>.

*Submitted by Arnold Pronto*



## News of American Branch Members

In August 2018 ABILA **Honorary Vice President Charles Brower** was appointed by the United States as Judge *ad hoc* at the International Court of Justice in *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)*. In this proceeding, Iran seeks both an Order of Provisional Measures and then a Judgment requiring the United States to revoke the sanctions against Iran that were announced in May 2018 and are now partly in force (with the remainder to be in force in November), following the Administration's withdrawal from the Joint Comprehensive Plan of Action.

The hearing on Iran's Request for the Indication of Provisional Measures was heard this past August 2018 and a ruling is expected on October 3.

In addition, the United States has also appointed Judge Brower as Judge *ad hoc* in another case brought against the USA by Iran, entitled *Certain Iranian Assets* (Islamic Republic of Iran v. United States of America), in which the Court is to hear the United States' preliminary objections to jurisdiction in early October. Judge Brower is one of only four Americans ever appointed Judges *ad hoc* at the ICJ (the others being Tom Franck, Bernie Oxman and David Caron). Only two have been appointed more than once (Judge Caron twice and Judge Brower now three times).

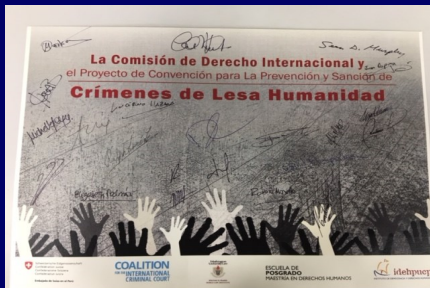
**Prof. Jennifer Trahan** (who chairs ABILA's ICC Committee and has been a member of the ILA's Committee on the Use of Force) was promoted to full professor at NYU's Center for Global Affairs. Her chapter entitled "The Crime of Aggression and the International Criminal Court" was published in *Seeking Accountability for The Unlawful Use of Force* (Cambridge, Leila Sadat ed.). In May she made a presentation to members of the UN Security Council on the International Criminal Court's crime of aggression, and another at a side-event to meetings of the International Law Commission on the ILC's role in the drafting of the crime of aggression.

**Professor Peter Yu** (ABILA's **Co-Director of Studies**) spoke at the open working session of the ILA Committee on Intellectual Property and Private International Law at the 2018 ILA biennial meeting in Sydney. That session focused on the draft ILA Guidelines on Intellectual Property in Private International Law. It is anticipated that the fully-drafted guidelines, with relevant commentary, will be presented to the ILA membership for adoption at the 2020 biennial meeting in Kyoto, Japan.

**Professor Haider Ala Hamoudi** was promoted to Vice Dean of the University of Pittsburgh School of Law on July 1, 2018. From 2013 to 2017, he served as Associate Dean of Research and Faculty Development. This past academic year, he was named Associate Dean for Academic Affairs.

At the Sydney Biennial **Professors Sean Murphy** and **David Stewart** participated in a panel (jointly sponsored by the American and Australia/New Zealand Societies of International Law entitled "Trans-Pacific Challenges in Developing International Law," covering a wide-ranging discussion of contemporary international law developments affecting Australia, New Zealand and the United States.

On September 27-28, 2018, in Lima, Peru, the Whitney R. Harris World Law Institute, directed by President-Elect **Leila Sadat**, in conjunction with the Pontifical Catholic University of Peru (PUCP), the Swiss Embassy and the Coalition for the International Criminal Court, hosted a "Latin America and the Caribbean Region Workshop on the ILC's Draft Articles on the Prevention and Punishment of Crimes Against Humanity." The workshop included approximately 28 distinguished participants, including members of the International Law Commission, distinguished judges and lawyers from the region, academics and members of civil society, and featured a discussion by Special Rapporteur Sean Murphy on the ILC Draft Articles and a keynote address by H.E. Judge Patrick Robinson of the International Criminal Court, amongst others. The event was preceded by a workshop open to the general public that also featured interventions by Dr. Elizabeth Salmon, from PUCP, Hugo Relva (from Amnesty International), Dr. Michelle Reyes (CICC Regional Director and PUCP faculty member) and Professors Leila Sadat and Sean Murphy. The Swiss Embassy graciously provided interpretation on both dates.





## Calendar of Upcoming Events

The **British Institute of International and Comparative Law (BIICL)** will hold its Annual Grotius Lecture on Thursday, October 18 2018. Lord Lloyd-Jones, Kt, QC, Justice of The UK Supreme Court will speak on the State Immunity Act 1978, 40 Years on. See <https://www.biicl.org/event/1351/annual-grotius-lecture-dinner-2018>.

The **American Bar Association's** International Conference in Mexico City will take place November 6-9, 2018 at the InterContinental Presidente. For additional information and registration, see <https://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=326057211>.

The **American Society of International Law** will hold its 8th Annual Research Forum on November 9-10 2018 at UCLA Davis School of Law, which will include expert-led discussions of more than 70 papers on a variety of leading-edge international law topics and several keynote lunch discussions. For information and to register, see <https://www.asil.org/midyear-meeting>

The 13th **Annual Conference on International Arbitration and Mediation** ("Key Issues in International Commercial and Treaty Arbitration: 2018") will take place at Fordham University School of Law Friday, November 2, 2018 featuring an Address by Hilary Heilbron QC. See [https://www.fordham.edu/info/25756/conference\\_on\\_international\\_arbitration\\_and\\_mediation](https://www.fordham.edu/info/25756/conference_on_international_arbitration_and_mediation).

The **British Institute of International and Comparative Law** will host the ICSID-SIA-BIICL Conference on Proposed Revision of ICSID Rules in London on November 13, 2018. See <https://www.biicl.org/event/1340/icsid-sia-biicl-conference-on-proposed-revision-of-icsid-rules>.

**BIICL** will also hold a one-day conference on December 7, 2018 on "Brexit, Human Rights and Devolution." See <https://www.biicl.org/event/1349/brexit-human-rights-and-devolution>.

The **University of Dayton School of Law** and the University of Dayton Human Rights Center will host **International Law Weekend-Midwest** on March 16, 2019

with a program entitled "Things Fall Apart or Creative Destruction?: The Future of the Rule of Law in International Governance." Location: University of Dayton Law School Courtroom, Keller Hall.

## ILW 2018 Co-Sponsors

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The Blue Mountains, New South Wales

# Schedule At-a-Glance

Thursday, October 18, 2018					
New York City Bar					
6:30pm	Opening Address: “The Current Administration’s Approach to International Law” Professor Harold Koh, Sterling Professor of International Law, Yale Law School Meeting Hall, Second Floor, NYC Bar Association				
8:00pm	Opening Reception sponsored by Debevoise & Plimpton LLP Reception Area, Second Floor				
Friday, October 19, 2018					
Fordham University School of Law					
8:00am	Complimentary Coffee sponsored by International and Non-J.D. Programs, Fordham University School of Law Soden Lounge				
9:00am	Is Investment Arbitration At Serious Risk?* Room 2-02C	Can the Law of Military Space Operations be Analogized from the “Terrestrial” Laws of War: A Roundtable Discussion Room 2-02B	Identity in the Age of Blockchain and Refugees Room 2-02A	70 years after the UDHR: Are we at the Endtimes of Human Rights? Room 2-01B	The Global Crackdown on Civil Dissent and Freedom of Expression Room 2-01A
10:30am	Break				
10:45am	Old Wine in New Bottles? The Trump Administration and Trade Law* Room 2-02C	Due Process for Refugees at Borders: A Challenge for International Law* Room 2-02B	Investor-State Dispute Settlement: A Brave New World or The Clock that Went Backward? Room 2-02A	The Meaning of Torture in National Security Room 2-01B	War, Peace, and International Law on the Korean Peninsula Room 2-01A
12:30pm	Box Lunch sponsored by the Leitner Center for International Law and Justice Soden Lounge				
12:30pm	ABILA Board of Directors Meeting (Lunch Provided) Room 3-03				
1:30pm	Keynote Address “The United States and International Law in the 21st Century” Professor Sean Murphy, Manatt/Ahn Professor of International Law, George Washington University Law School Room 2-02 A/B				
2:45pm	Break				
3:00pm	Investing in Climate Change Technologies: Barriers and Opportunities* Room 2-02C	The Inquiry on Protecting Children in Conflict Room 2-02B	Pathways to Careers in International Law Room 2-02A	Do Multilateral Intellectual Property Negotiations Still Matter in the Age of Plurilaterals? Room 2-01B	The New Global Compact on Migration Room 2-01A
4:30pm	Break				
4:45pm	Imposing Obligations on Foreign Investors: An Emerging Trend in International Investment Law* Room 2-02C	Surveillance, Privacy, and Human Rights: The Outlook for 2019* Room 2-02B	The Rome Statute at 20: Dedicated to the Memory of M. Cherif Bassiouni, the “Father” of International Criminal Law and the ICC Room 2-02A	Planting Grassroots Human Rights Room 2-01B	Refole Me Once, Shame on Who? The United States and Non-refoulement under the Convention Against Torture in Armed Conflict Room 2-01A

\* Approved for CLE. Sign-in sheets located in panel rooms.

# Schedule At-a-Glance

Saturday, October 20, 2018 Fordham University School of Law					
8:00am	Complimentary Coffee sponsored by International and Non-J.D. Programs, Fordham University School of Law Soden Lounge				
9:00am	<b>Private International Law Matters*</b> <i>Room 2-02C</i>	<b>Does International Criminal Justice Work? Syria, North Korea, and the Role of International Criminal Justice in Resolving Global Crises</b> <i>Room 2-02B</i>	<b>The Use of Force in Peace Operations</b> <i>Room 2-02A</i>	<b>The Security Council in a Fracturing World: Questions of Effectiveness, Legitimacy and Legal Coherences</b> <i>Room 2-01B</i>	<b>Will the Treaty on Genetic Resources and Traditional Knowledge Provide Meaningful Protection to Indigenous Communities?</b> <i>Room 2-01A</i>
10:30am	<b>ILSA Board of Directors Meeting</b> <i>Room 4-03</i>				
	<b>Break</b>				
10:45am	<b>Smart Contracts and Blockchain: Where Will Disputes Arise and How Should They Be Resolved?*</b> <i>Room 2-02C</i>	<b>Is Investment Law Harmonious With The Rule Of Law?*</b> <i>Room 2-02B</i>	<b>Statelessness: The Worldwide Absence of Legal Protection</b> <i>Room 2-02A</i>	<b>The Demise of the WTO Appellate Body?</b> <i>Room 2-01B</i>	<b>Legacies and Memories of International (Criminal) Law</b> <i>Room 2-01A</i>
12:30pm	<b>Lunch Break</b> <b>ILSA Congress, Meeting of ILSA Members</b> <i>Room 2-01B</i>				
	<b>ABILA Members Annual Meeting</b> <i>Room 4-02</i>				
1:45pm	<b>Free Form Treaty Interpretations Last Stand: Why the Vienna Convention Treaty Interpretation Rules Matter More than Ever in the Outer Space Domain*</b> <i>Room 2-02C</i>	<b>The BBNJ Negotiations: Where do we stand after the beginning of the Intergovernmental Conference?</b> <i>Room 2-02B</i>	<b>2019 Jessup Compromis Panel</b> <i>Room 2-02A</i>	<b>Protecting the Environment Before, During, and After Armed Conflict</b> <i>Room 2-01B</i>	<b>Emerging Voices</b> <i>Room 2-01A</i>
3:15pm	<b>Break</b>				
3:30pm	<b>Careers in International Development</b> <i>Room 2-02C</i>		<b>How Customary International Law Matters in Protecting Human Rights</b> <i>Room 2-02A</i>		

\* Approved for CLE. Sign-in sheets located in panel rooms.