



ABILA Newsletter

Issue No. 86

ILA—Founded 1873

May 2010

2010 BIENNIAL CONFERENCE OF THE ILA: “DE IURE HUMANITATIS: PEACE, JUSTICE, AND INTERNATIONAL LAW”

Every two years the International Law Association stages a major conference that brings together leading international lawyers, international law academics, and members of governments and international organizations from around the world. The biennial conferences provide a venue for working and open sessions of the ILA’s numerous committees, and also offer numerous panels and speakers on topics of public and private international law. The 2010 conference, hosted by the Dutch Branch of the ILA, will be held from August 15-20 in the historic city of The Hague. Registration for the 2010 Conference has already begun. The registration fee for members is €650 between May 15 and July 1; the fee increases to €750 after July 1. In order to find more detailed information and to register for the conference and book a hotel, visit the official conference website at <http://www.ila2010.org>.



Peace Palace — The Hague

The Hague, with a population of almost 500,000, hosts many international organizations, mostly of a judicial nature. These include the International Court of Justice and the Permanent Court of Arbitration, both of which are housed at the Peace Palace. The Hague is also home to the International Criminal Court, the Special Court for Sierra Leone, the International Criminal Tribunal for the former Yugoslavia, and the Organization for the Prohibition of Chemical Weapons, which is the implementing body of the Chemical Weapons Convention. “De Iure Humanitatis: Peace, Justice, and

International Law,” the 74th Conference of the International Law Association, also marks the 100th anniversary of the Dutch Branch of the ILA. The conference will be held on the campus of The Hague University, with a formal opening session on the morning of Monday, August 16. During the conference, ILA members will be able to share knowledge, ideas, and insights with hundreds of peers from around the globe. Sessions will address a wide range of international issues, from climate change, to the role of religion in international law, to the future role of international law in outer space, to international arbitration.

Evenings will provide registrants the option of either attending organized social events or striking out on their own. The first evening of the conference will feature a reception at Haagse Hogeschool—The Hague University. This famous campus, known especially for its magnificent glass-domed atrium hall, is entirely surrounded by water and designed to resemble a city within a city. On the evening of Wednesday, August 18, the ILA will have a gala dinner at Ridderzaal, or the Knights Hall, which is a 13th-century gothic manor house located beside a lake and used today for royal receptions and inter-parliamentary conferences. Finally, on August 19th there will be a reception at the Peace Palace—often referred to as the seat of international law because it houses the International Court of Justice, the Permanent Court of Arbitration, The

(Continued on page 3)

CALENDAR OF EVENTS

ILA AND ABILA EVENTS

August 15-20, 2010 —

De Iure Humanitatis: Peace, Justice and International Law, ILA Biennial Conference, The Hague

October 21-23, 2010 —

International Law Weekend, New York

February 25-26, 2011 —

International Law Weekend — West, Los Angeles

FOR INFORMATION ABOUT ILA, ABILA AND CO-SPONSORED EVENTS, PLEASE SEE:
www.ila-americanbranch.org/ABILA_ILA_Events.aspx

PRESIDENT’S MESSAGE

My message for this *Newsletter* issue is short: I urge you all to attend the International Law Association’s biennial conference in The Hague August 15-20, 2010. The several biennial conferences I’ve attended have been extraordinarily rewarding. They of course offer chances to participate in important ILA committee working sessions and to learn from top-flight panelists. Particularly valuable have been the opportunities to interact with colleagues from around the world and to experience an amazing set of cultural events and social outings. Visit The Hague this coming August! The conference is featured in a front-page story in this *Newsletter*, and information about the program, outings, hotels, and registration is available at www.ila2010.org.

John E. Noyes

2010 MEMBERSHIP

Please renew your membership in the American Branch (or join us as a new member!). Membership renewals are due at the start of each calendar year. A membership form is available at www.ila-americanbranch.org.

Annual dues are as follows: new members, \$70.00 per year for each of the first two years; regular members, \$100.00; sustaining members, \$200.00; institutional members (including academic institutions, libraries, and not-for-profit organizations), \$175.00; and corporate members, \$500.00. Student Associates may join the Branch for free.

Here are some benefits of membership:

Support for the activities of the ILA headquarters (see www.ila-hq.org).

Participation in ABILA and ILA committees. Student Associates may be observers or have internship opportunities with ABILA committees.

Free receipt of the *ILA Newsletter*, the biennial *ILA Report*, the *ABILA Newsletter*, the *International Practitioner's Notebook* (published as an issue of the *ILSA Journal of International and Comparative Law*), and the biennial American Branch *Proceedings*. Student Associates receive the *ABILA Newsletter* electronically. The *International Practitioner's Notebook* will be available to members electronically through the Branch's website; a hard copy will be sent to institutional and corporate members for free, and to individual members who pay an additional \$15.00.

Free attendance at the annual International Law Weekend in New York, regional ILWs, and selected programs.

Individuals who support the American Branch through a \$5,000.00 payment will be recognized as Patrons of the American Branch of the International Law Association. Patrons are life members of the Branch and do not pay annual dues.

LARRY JOHNSON NAMED AS ILA UNITED NATIONS OBSERVER

At the May 8, 2010, meeting of the Executive Council of the International Law Association in London, the ILA's Director of Studies, Professor Christine Chinkin, reported that Larry D. Johnson has agreed to serve as the ILA's observer at the United Nations. The ILA is a nongovernmental organization in consultative status with the United Nations Economic and Social Council. Mr. Johnson will report to the Association periodically on United Nations developments in New York. Mr. Johnson is well known to those familiar with the United Nations, having served as the UN's Assistant Secretary-General for Legal Affairs, Chef de Cabinet in the President's Office at the International Criminal Tribunal for the former Yugoslavia, and Legal Adviser to the International Atomic Energy Agency. He has recently been teaching a course on Constitutional Law of the United Nations at Columbia Law School. His reports will be made available on the ILA website (www.ila-hq.org) and the Branch's website (www.ila-americanbranch.org), and the reports will also be noted in this Newsletter.

Professor Chinkin expressed her gratitude to Professor Martin Glassner, who resigned as the ILA's observer at the United Nations after many years of service. The American Branch joins in that thanks.

The ILA's Executive Council also reacted favorably to Professor Chinkin's suggestion that the Association arrange for an ILA observer at the United Nations in Geneva.

The American Branch's United Nations Law Committee, chaired by John Carey, also follows UN developments. The Committee has recently issued two valuable reports, on "The United States and the United Nations Human Rights Council" and "The United States and Universal Periodic Review." See <http://www.ila-americanbranch.org/CommitteeDetail.aspx?CommitteeID=81>.

The American Branch's United Nations Law Committee, chaired by John Carey, also follows UN developments. The Committee has recently issued two valuable reports, on "The United States and the United Nations Human Rights Council" and "The United States and Universal Periodic Review." See <http://www.ila-americanbranch.org/CommitteeDetail.aspx?CommitteeID=81>.

The American Branch's United Nations Law Committee, chaired by John Carey, also follows UN developments. The Committee has recently issued two valuable reports, on "The United States and the United Nations Human Rights Council" and "The United States and Universal Periodic Review." See <http://www.ila-americanbranch.org/CommitteeDetail.aspx?CommitteeID=81>.

The American Branch's United Nations Law Committee, chaired by John Carey, also follows UN developments. The Committee has recently issued two valuable reports, on "The United States and the United Nations Human Rights Council" and "The United States and Universal Periodic Review." See <http://www.ila-americanbranch.org/CommitteeDetail.aspx?CommitteeID=81>.

Transparency in International Arbitration Event Held at Georgetown Law

On April 26, 2010, Georgetown University Law Center's Center for Transnational Business and the Law hosted a conference on "Transparency in International Arbitration: A Focus on Best Practices." This program was jointly sponsored by the American Branch of the International Law Association, the American Society of International Law (ASIL), and the International Dispute Resolution Committee of the International Law Section of the District of Columbia Bar Association. The one-day conference included panels on defining the scope of public interest in investment arbitration, identifying the potential pitfalls of transparency-enhanced procedures for the resolution of arbitration disputes, and best practices for greater transparency.

Over fifty people attended the event, including judges, practitioners, professors, students, and experts in the field of arbitration. The panels were moderated to allow for extensive discussion with the audience, resulting in a lively debate and thought-provoking dialogue throughout the day.

The purpose of the event was to receive such input from arbitration professionals as the final part of a joint project between ABILA and ASIL on transparency in international arbitration (both investment and commercial). ASIL will publish the conference proceedings in its series, *Studies in Transnational Legal Policies*.

Professors Louise Ellen Teitz and David Stewart organized the event, with the assistance of American Branch Program Director Rachel Smith. Professor Teitz, an ABILA Executive Committee member, and Professor Stewart, who is a Vice President of the Branch, are Co-Chairs of the American Branch Committee on Commercial Dispute Resolution. ABILA member Ruth Teitelbaum, of Freshfields Bruckhaus Deringer LLP in New York, was also instrumental in organizing the program and arranging for panelists. ABILA Executive Committee member Anibal Sabater of Fulbright & Jaworski, who is Chair of the Branch's Committee on Extraterritorial Jurisdiction, was one of the panelists, speaking about pitfalls of transparency in arbitration.

(Continued from page 1)

Hague Academy of International Law, and an extensive library.

The final event (which must be booked and paid for separately) is a guided tour of Holland's largest national park (De Hoge Veluwe), the famous Kröller Müller museum, and a medieval castle. The Kröller Müller museum exhibits fine 19th and 20th-century art, including a world famous collection of work by Van Gogh, and an exceptional collection of modern sculptures. After lunch, the tour will conclude with a visit to Slot Lovestein, a 14th-century fortress located in a region of rivers and scenic beauty.

New American Branch Patrons

The American Branch is grateful for the support it receives from its Patrons, who join the Branch as life members. Both Edward Gordon and Ved Nanda have agreed to become Patrons. Edward Gordon is a former President of the American Branch (1992-1994) and is now an Honorary Vice President. He recently organized an exhibit at the Yale Law Library on "Freedom of the Sea, 1609: Grotius and the Emergence of International Law," which was noted in the January 2010 edition of this *Newsletter*. Ved Nanda is also an Honorary Vice President of the Branch and the Evans University Professor and Thompson G. Marsh Professor of Law at the University of Denver. He organized the highly successful February 2010 regional International Law Weekend in Denver, which is the subject of an article in this issue of the *ABILA Newsletter*.

Current American Branch Patrons include:

- Charles N. Brower
- Edward Gordon
- Cynthia Lichtenstein
- John F. Murphy
- James A.R. Nafziger
- Ved Nanda
- John E. Noyes
- Charles D. Siegal

For more information about the Patrons program, see <http://www.ila-americanbranch.org/Patrons.aspx>.

On February 12-13, 2010, approximately 125 people attended the first International Law Weekend – Midwest conference, hosted by the University of Denver's Sturm College of Law. Professor Ved Nanda organized the event. Professor Nanda is an Honorary Vice President and Patron of the American Branch of the International Law Association, and the Evans University Professor and the Thompson G. Marsh Professor of Law at the University of Denver.

ILW – Midwest, modeled after the successful biennial International Law Weekend – West, will be held in even-numbered years, with the next ILW – Midwest conference at Case Western University School of Law in Ohio in early 2012. ILW – West will continue to be held during odd-numbered years. Southwestern Law School in Los Angeles will host the next ILW – West on February 25-26, 2011.

The Denver conference featured five panels of experts, all linked to the theme "Corporate Governance and Sustainable Development." Panel topics included "International Law and Sustainability," "Sustainable Mining and International Law," "International Issues for Sustainable Energy," "Sprawl in the USA and Sustainability: A Critical Historic and International Perspective," and "Ethics and Corporate Governance."



Prof. Daniel B. Magraw, Jr.

The first of three keynote speakers during the conference was Daniel B. Magraw, Jr., President of the Center for International Environmental Law in Washington, DC, who addressed "Climate Change, the Green Economy, and Social Justice: Implications for Sustainable Development."

Professor David Caron, the C. William Maxeiner Distinguished Professor of Law at the University of California/Berkeley School of Law and currently President of the American Society of International Law, spoke about "Imagining the Arctic: Reflections on Law, Politics, and Sustainability."



Prof. David Caron

The final speaker was Professor John C. Dernbach, Director of the Environmental Law Center at the Widener University School of Law, who discussed "Agenda for a Sustainable America."

Papers presented during the weekend will be published in an upcoming issue of the *Denver Journal of International Law and Policy*.

BOOK NOTES

The Evolving Dimensions of International Law: Hard Choices for the World Community

John F. Murphy
Cambridge University Press, 2010
ISBN 9780521882712

Professor John Murphy's new book examines recent developments in sources of public international law. He addresses treaties and customary international law, as well as developments in some primary rule of law international institutions. Professor Murphy finds that public international law has become increasingly dysfunctional in dealing with some of the major problems facing the world community, such as the maintenance of international peace and security, violations of international human rights, the law of armed conflict, arms control, disarmament and nonproliferation,

INTERNATIONAL LAW WEEKEND

OCTOBER 21-23, 2010

On October 21-23, 2010, the American Branch of the International Law Association and the International Law Students Association will present the annual International Law Weekend conference in New York, in conjunction with the 89th annual meeting of the American Branch. The overall theme of ILW 2010 is "International Law and Institutions: Advancing Justice, Security and Prosperity," and the more than thirty panels to be held will address topics such as: the role of the United Nations in the development of international law; the Treaty of Lisbon; the international law on nuclear disarmament; and international enforcement of bribery and corruption laws. Other panels include: TRIPS at 15;

The Limits of International Adjudication; War, Philosophy and the Geneva Conventions; Managing Discovery in Commercial Arbitration: The Institutional Response; Constitutional Environmental Rights Worldwide; and The Evolution of Corporate Accountability for Human Rights Abuses.

A complete list of panels and registration information will be posted online in the coming months at <http://www.ila-americanbranch.org/IntlLawWknd.aspx>. ILW 2010 will take place at the Association of the Bar of the City of New York on October 21, and at Fordham University School of Law on

October 22 and 23. Please plan to join the hundreds of practitioners, professors, members of the governmental and non-governmental sectors, and students at this major event. Admission is free to members of the American Branch and cosponsoring organizations.

The American Branch and ILSA gratefully acknowledge the support of ILW cosponsors. Cosponsors to date include:

- * American Bar Association Section of International Law
- * Allen & Overy LLP
- * American Society of International Law
- * American University, Washington College of Law
- * California Western School of Law
- * Connecticut Bar Association Section of International Law
- * Customs and International Trade Bar Association
- * Debevoise & Plimpton LLP
- * Edwards Angell Palmer & Dodge LLP
- * Fordham University School of Law
- * Freshfields Bruckhaus Deringer LLP
- * The George Washington University Law School
- * Hofstra University School of Law
- * Leitner Center for International Law and Justice
- * Pace Law School
- * Seton Hall University School of Law
- * Simpson, Thacher & Bartlett LLP
- * Skadden, Arps, Slate, Meagher & Flom and Affiliates
- * Willkie Farr & Gallagher LLP
- * Wilmer Cutler Pickering Hale & Dorr LLP

BOOK NOTES (Cont'd)

(Continued from page 3)

and international environmental issues. International law and international institutions face a problematic future. Prof. Murphy concludes, however, that all is not lost. There are possible alternative futures for international law and legal process, but choosing among them will require the world community to make hard choices.

John F. Murphy is Professor of International Law and Business at Villanova University School of Law, and an Honorary Vice President and Patron of the American Branch of the International Law Association. He is the author or editor of numerous books and monographs. *The Evolving Dimensions of International Law: Hard Choices for the World Community* was released in March 2010.

Customary International Law: A New Theory with Practical Applications

Brian D. Leppard
Cambridge University Press, 2010
ISBN 9780521191364

Prof. Brian D. Leppard of the University of Nebraska College of Law, and Co-Chair of the American Branch's Committee on For-

mation of Rules of Customary International Law, has recently published a book entitled *Customary International Law: A New Theory with Practical Applications*. The book examines how customary international law, although long recognized as a primary source of international law, continues to be filled with enigmas, both conceptual and practical. These include how to determine the existence of *opinio juris*, the function of the state practice requirement, the definition of *jus cogens* norms, and the relationship between customary international law and ethics. In part because of these enigmas, customary international law has generated a wide range of literature. However, no recent book-length work has attempted to articulate a comprehensive theory of customary international law that can effectively resolve these questions.

This book sets out to accomplish this goal. Its approach is unique in a number of ways. For example, it is multidisciplinary and draws insights from fields such as legal theory, philosophy, political science, and game theory. In addition, it is anchored in a sophisticated ethical framework and explores at length the interconnections between customary international law and ethics. The book was published in January 2010.

ILA EXECUTIVE COUNCIL
NAMES AMERICAN BRANCH
MEMBERS TO ILA
COMMITTEES AND STUDY
GROUPS

At its May 8, 2010, meeting in London, the Executive Council of the International Law Association approved the appointment of two American Branch members to ILA committees. Professor Daniel H. Joyner of the University of Alabama School of Law was named to the Committee on Nuclear Weapons, Non-Proliferation, and Contemporary International Law. Professor Joyner's numerous publications include *International Law and the Proliferation of Weapons of Mass Destruction* (Oxford University Press, 2009) and *Interpreting the Nuclear Nonproliferation Treaty* (Oxford University Press, 2010). Dr. Anita Halvorssen, who teaches international law and international environmental law courses at the University of Denver's Sturm College of Law and the University of Colorado, and who has written extensively about sustainable development and climate change, was selected as an alternate member of the ILA's Committee on Legal Principles Relating to Climate Change.

Also recently named to the ILA Study Group on United Nations Reform was Arnold N. Pronto, an American Branch member who works as Senior Legal Officer in the United Nations Office of Legal Affairs (Codification Division).

For a complete list of American Branch representatives on ILA committees, see <http://www.ila-americanbranch.org/LondonComm.aspx>.

FOR PREVIOUS AMERICAN
BRANCH NEWSLETTERS, SEE

<http://www.ila-americanbranch.org/ABILANewsletter.aspx>.

BOOK REVIEW

The ICSID Convention: A Commentary (2d ed.)

Christoph H. Schreuer with Loretta Malintoppi, August Reinisch and Anthony Sinclair
Cambridge, 2009

Pp. 1,524 (Hardback, US\$360), available through www.cambridge.org
ISBN 9780521885591



* Reviewed by Elliot Friedman, Associate, Freshfields Bruckhaus Deringer US LLP

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention" or the "Convention") facilitates the settlement of disputes between States and foreign investors through arbitration or conciliation administered by the International Centre for the Settlement of Investment Disputes ("ICSID"). *The ICSID Convention: A Commentary (2d ed.)*, by Professor Christoph H. Schreuer et al., is a systematic commentary on the Convention.

The first edition of Professor Schreuer's *The ICSID Convention*, published in 2001, was an essential reference work for those practicing in the field of ICSID arbitration. The same is true of the second edition, which sees Professor Schreuer taking on three co-authors. The inclusion of additional authors is hardly surprising given the explosion in the number of cases brought under the ICSID Convention in the intervening years, and the rich (and voluminous) jurisprudence emerging from the decisions rendered by ICSID tribunals.

The book runs to over 1500 pages. It addresses every Article in the ICSID Convention and covers in great detail each Article's negotiating history and, where applicable, relevant case law and academic commentary. The rigor and clarity of the analysis makes this work both highly valuable and a

pleasure to read. The authors also helpfully include a bibliography at the beginning of their discussion of each Article (where commentary is available), identifying additional sources relating to the subjects covered in that Article.

The ICSID Convention is not, and is not intended to be, a comprehensive treatise on international investment law. This is because the ICSID Convention itself provides a *system* for the resolution of investment disputes, rather than substantive investment protections themselves (such as fair and equitable treatment and the prohibition on expropriation without compensation), which instead are to be found, for example, in customary international law, bilateral investment treaties, and multilateral agreements such as the Energy Charter Treaty.

The ICSID Convention does, however, address a number of matters of substance regulating an investor's right to bring, and maintain, actions under the ICSID system of dispute resolution. For example, Article 25 of the Convention sets out the jurisdiction of ICSID and Article 52 provides the grounds upon which an ICSID tribunal's award may be annulled. Both of these Articles raise fundamental issues of substance, and both are addressed at length in *The ICSID Convention*.

Given the frequency with which new decisions are being rendered by ICSID tribunals, this work was necessarily outdated the moment that it was published. This is not a criticism of the book; it merely recognizes that this particular area of law is undergoing continual and frequent development. Similarly, the explosion in arbitral decisions means that it is simply not possible for the new edition to be as exhaustive as the first one was. Nonetheless, the authors have attempted to remain current and incorporate the new case-law while not materially changing the size of the book. In sum, this book is an invaluable reference work and will doubtless find its way onto the bookshelves of those practicing in the field, as it should.

The first edition of *The ICSID Convention* was unquestionably the "go to" book on the ICSID Convention. Evidence of this fact is the frequency with which ICSID tribunals cited the work. The second edition will surely occupy the same position.

American Branch of the
International Law Association
c/o Charles D. Siegal, Esq.
Munger, Tolles & Olson LLP
355 S. Grand Ave., 35th Fl
Los Angeles, CA 90071-1560