

PROCEEDINGS
OF THE
AMERICAN BRANCH
OF THE
INTERNATIONAL LAW ASSOCIATION
2020 – 2024

<https://www.ila-americanbranch.org>

Freya Doughty-Wagner, *Editor*
June 2025

Proceedings of the American Branch of the International Law Association

2020-2024

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**PART II – INTERNATIONAL
LAW WEEKEND**

International Law Weekend 2020

International Law Weekend 2020 was held online from October 22 to 24, 2020. The theme was “International Law in Challenging Times.” The American Branch of the International Law Association organized the Weekend. It featured twenty-six panels that explored the current challenges facing the international legal system and how these challenges affect the work of international institutions. It discussed whether the current international legal system was resilient enough to address these challenges or if it needs substantial reform to do so.

The Presidential Opening Plenary was held on Thursday afternoon, October 22, 2020, and was titled “President’s Opening Plenary Panel: International Law in Challenging Times.” Presidential Opening Plenary speakers included Gian Luca Burci (Professor, Graduate Institute of International and Development Studies, Geneva), H.E. Judge Silvia Fernández de Gurmendi (International Criminal Court), and David Scheffer (Professor, Northwestern Pritzker School of Law). Leila Nadya Sadat chaired this panel.

On Thursday, October 22, 2020, the panels were:

- Intellectual Property and COVID-19 in International Law (co-chaired by Sean Flynn and Peter K. Yu)
- 2020 Vision: Trends and Challenges in the Enforcement of International Arbitral Awards (chaired by Julianne Marley)
- Climate Change and the Law of the Sea (Aimee-Jane Lee)
- Surveillance, Privacy, and Human Rights: The Outlook for 2021 (chaired by Peter Margulies)

Friday, October 23, 2020, began with eight panels, followed by a Keynote Address by Catherine Amirfar (Partner, Debevoise & Plimpton LLP; President, American Society of International Law) titled “The Making (and Unmaking) of the International Rule of Law). She was introduced by Chiara Giorgetti.

On Friday, October 23, 2020, the panels were:

- COVID-19 and Climate Change: A Setback or Strengthening the Resolve to Move Forward? (chaired by Myanna Dellinger)
- Business Engagement in Global Governance: Boon or Peril? (chaired by Ayelet Berman)
- Submarine Cables and Pipelines under International Law: The Ongoing Work of the ABILA Committee on Law of the Sea (chaired by Coalter G. Lathrop)
- Strengthening the International Criminal Court: A Path Forward? (chaired by Elizabeth Nielsen)
- The Challenge of Globalizing Private International Law (co-chaired by Ronald A. Brand and Louise Ellen Teitz)
- Asylum in Crisis: Upholding Human Rights During a Pandemic (chaired by Sunil Varghese)
- Standard Setting for Outer Space Activities: Choice of Forums and Methods (chaired by Matthew Schaefer)
- Gun Violence as a Human Rights Issue & the U.S. Government’s Failure to Fulfill its International Obligations (chaired by Madaline George)
- On Being a Lawyer-Diplomat (chaired by David P. Stewart)

- Obligations *Erga Omnes* before the International Court of Justice (chaired by Nawi Ukabiala)
- Arbitration of Human Rights at Sea: Giving International Law Teeth by Empowering Victims to Enforce It (chaired by Anna Petrig)
- Race, Culture, and Law in Muslim-Majority Countries (chaired by Sahar Aziz)
- Novel Human Rights Crises During a Global Pandemic (chaired by Aaron Fellmeth)
- The U.S. and the International Criminal Court – Can a Court in the Netherlands be a U.S. National Security Threat (chaired by Jennifer Trahan)
- From Accord Back to Confrontation: The Return of the Iran Nuclear Crisis (chaired by Jack M. Beard)
- UN Diplomacy in Times of COVID-19 (chaired by Bart Smit Duijzentkunst)

Friday concluded with International Law Trivia, co-hosted by Michael P. Scharf and Madaline George.

Saturday, October 24, 2020, opened with a Keynote Address from Judge Julia Sebutinde (International Court of Justice; Muteesa I Royal University). She was introduced by Yvonne Dutton. Following the Keynote Address was the ‘United Nations 75th Anniversary Plenary Panel,’ moderated by Leila Nadya Sadat. Plenary Panel speakers were Patrícia Galvão Teles (Professor, Autonomous University of Lisbon; Member, U.N. International Law Commission), Charles Jalloh (Professor, Florida International University; UN International Law Commission), Larry D. Johnson (Former Assistant Secretary-General for Legal Affairs, United Nations), and Ambassador Christian Wenaweser (Permanent Representative of the Principality of Lichtenstein to the United Nations). The morning concluded with the ABILA Members’ Meeting and the ABILA Annual Award Presentations. Cynthia Lichtenstein (Boston College of Law; former President, American Branch of the International Law Association) received the Charles Siegal Distinguished Service Award. The ABILA Book of the Year Award went to Jennifer Trahan for *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes*.

On Saturday, October 24, 2020, the panels were:

- The End of American Human Rights Exceptionalism (co-chaired by Peter McGuinness and Anil Kalhan)
- Investor-State Disputes, International Finance, and the Economic Crisis (chaired by Virág Ilona Blazsek)
- Weaponry, Technology, Uncertainty, and Regulation (chaired by Christopher Borgen)
- Hot Topics: The 2020 Election and its Impact on International Trade and Investment (chaired by Tejasvi M. Srimushnam)
- Privacy, Big Data, and International Law in Pandemic Times (chaired by Konstantia Koutouki)
- International Supply Chain: Challenges in the Time of Pandemics and Global Disruption (co-chaired by Irene Calboli and Jessica Simonoff)

The American Branch extends its gratitude to the 2020 ILW Program Committee, composed of: Yvonne Dutton (Co-Chair, Indiana University Robert H. McKinney School of Law), Chiara Giorgetti (Co-Chair, University of Richmond School of Law), Tejasvi M. Srimushnam (Co-Chair, Federal Trade Commission), William Aceves (California Western School of Law), Pamela Bookman (Fordham University School of Law), Kristen Boon (Seton Hall Law School), Amity Boye (White & Case LLP), M. Imad Khan (Winston & Strawn LLP), David Nanopoulos (Office of Legal Affairs, United

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The American Branch also gratefully acknowledges the generous support of the following sponsors of ILW 2020: American Bar Association International Law Section, American Society of International Law, Arbitration Place, Benjamin N. Cardozo School of Law, Brill Nijhoff, California Western School of Law, Case Western Reserve University School of Law, Columbia Law School, Covington & Burling LLP, Debevoise & Plimpton LLP, International Law Students Association, Polivy, Lowry & Calyton LLC, TDM OGEMID, White & Case LLP, and The Whitney R. Harris World Law Institute.

INTERNATIONAL LAW WEEKEND 2020
ONLINE – HOSTED BY ARBITRATION PLACE
OCTOBER 23, 2020

KEYNOTE ADDRESS: THE MAKING (AND UNMAKING) OF
THE INTERNATIONAL RULE OF LAW

CATHERINE AMIRFAR

Let me just start by thanking all of you for being here with me today. It's a privilege to address you, my colleagues, my friends. These are tumultuous times in which we can take nothing for granted. We come together amid a pandemic, economic upheaval, and a mass movement against systemic racial injustice in our country and around the world. No one here needs any reminder that we are also on the eve of the 2020 presidential election, which some have called a battle for the soul of our country. It is a moment that I think is no exaggeration to say that we will look back upon as significant in the arc of our history. When I was asked to deliver this keynote, I knew there was little else I could speak about besides the basics. And for lawyers, it is difficult to get more basic than the rule of law. As lawyers, we are keepers of a faith that unites us regardless of our differences. We all adhere to a central premise that law, not force, should rule the world. In April this year, I was privileged to assume the presidency of the American Society of International Law, or ASIL.

ASIL is a leading organization devoted to studying and promoting international law in the United States and the world. This past June, the Society held its 114th Annual Meeting for the first time in virtual format on the promise of international law. At the opening of that remarkable event, I talked about ASIL's mission, and today, I want to build on some of those same themes. I look at my topic today, 'The Making (And Unmaking) of the International Rule of Law,' through the prism of the society's mission from its earliest days. Over a century ago, ASIL was founded in 1906 with the express mandate, and I quote, "to promote the establishment and maintenance of international relations on the basis of law and justice." From the very beginning, it was not a quiet mission, but was strident in its ambition, which was literally to change the world by contributing to a more just and peaceful society. The early leaders of the society included two future chief justices and three Associate Justices of the Supreme Court, Secretaries of State and War, and William Howard Taft, who would become President of the United States.

Elihu Root, a founder of the Society, wore many hats. He was the Society's first president and served as both the Secretary of War and Secretary of State. In the inaugural issue of the *American Journal of International Law*, he wrote that one way to prevent war and other conflicts was "to increase the general public knowledge of international rights and duties and to promote a popular habit of reading and thinking about international affairs."¹ Lest anyone think he was being naïve, he conceded that while the whole body of any people could not be expected to be familiar with international law, enough citizens could become sufficiently familiar with it to lead and form public opinion in every community in our country upon all important international questions as they arise. And so was born a society devoted to fostering knowledge of international law and translating that knowledge into action. ASIL

¹ Elihu Root, *The Need of Popular Understanding of International Law*, 69(6) *The Advocate of Peace* 148, 149 (1907).

stood witness to the lessons of history as humanity endured two horrific world wars that fundamentally tested the premise of international law. While it is sometimes forgotten, many felt a profound sense of failure during the Second World War regarding the entire enterprise of international law and international institutions as a means of ensuring peace and stability.

In 1940, Philip Jessup sought to refute the critics who were arguing that pre-war international law and institutions like the league and PCIJ had failed us, and in defending their prospects, observed that, and I quote his words, “the bitter disillusionment of today is the result of exaggerated hope, not the ultimate collapse of human civilization.”² He went on to say that “to believe in the imminent demise of international law was tantamount to embracing the council of despair.”³ Now, as this group well knows, the reports of international law's death were greatly exaggerated, far from meeting its demise because of champions like Jessup, international law and institutions were given new life in a post-war world order, fueled by the belief in the power the international rule of law and manifesting in the Dumbarton Oaks and San Francisco conferences.

850 Delegates from 50 nations convened in San Francisco in June 1945 with almost 6000 advisors, staff, media, and observers in attendance. The UN reports that the San Francisco conference was not only the most important in history but perhaps the largest international gathering of States ever to take place. The last meeting, the San Francisco conference, was held in the Opera House on June 25. Lord Halifax presided, and in putting the final draft of the UN Charter to the meeting, he said, “this issue upon which you are about to vote is as important as any we shall ever vote in our lifetime.”⁴ The next day, the UN Charter and the Statute of the International Court of Justice were signed, as this group also well knows, the United States played a crucial role in this new world order, investing deeply in the architecture of the United Nations and the International Court of Justice. In addressing the delegates on the final day, President Truman stated, “The Charter of the United Nations, which you have just signed, is a solid structure upon which we can build a better world. History will honor you for it. Between the victory in Europe and the final victory in Japan, in this most destructive of all wars, you have won a victory against war itself. [...] With this Charter, the world can begin to look forward to the time when all worthy human beings may be permitted to live decently as free people.”⁵

Now, if you'll permit me to be reductionist for my purposes today, this long history can be said to embody the making of the post-war international rule of law, and that it established the foundations for the modern international system of laws and institutions, the story of the United States as a superpower in its relationship to international law and institutions has not been uncomplicated. Since the UN Charter, the US has fought an entrenched Cold War, approached the brink of nuclear annihilation, and participated in numerous armed conflicts, large and small. The international rule of law has been tested frequently. In the US, as a superpower, there has been a strong pull in Capitol Hill and in the Executive criticizing the international order, invoking the rubric of US interests as paramount, as coming first. Some have argued that international law is an anomaly and a myth propagated by weak states to prevent the strong from maximizing their power advantage. This is not

² Philip C. Jessup, *In Support of International Law*, 34(3) THE AM. J. OF INT'L LAW 505, 506 (1940).

³ *Id.* at 508.

⁴ 1945: *The San Francisco Conference*, United Nations, <https://unpeacekeeping.live/www.un.org/en/sections/history- united-nations-charter/1945-san-francisco-conference/index.html> (last visited May 6, 2025).

⁵ Harry S. Truman, *Address in San Francisco at the Closing Session of the United Nations Conference*, The American Presidency Project, <https://www.presidency.ucsb.edu/documents/address-san-francisco-the-closing-session-the-united-nations- conference> (last visited May 6, 2025).

a new theme, and we have heard its echoes recently, for example, in the context of the un-signing of the ICC Rome Statute by the George W. Bush administration. But even if not new, I think it is fair to say that this theme is now being played at a loud volume. The Trump Administration has either withdrawn or signaled its intention to withdraw the United States from the Open Skies Treaty, the World Health Organization, the Paris Agreement, the Intermediate-Range Nuclear Forces Treaty, the Trans-Pacific Partnership, the Joint Comprehensive Plan of Action to Congress, and the Human Rights Council.⁶ The New START Treaty has not been renewed. But it is more than just US disengagement from the international system. On September 3, 2020, the Trump Administration issued an executive order formally designating and instituting asset freezes and visa restrictions targeted against prosecutors and investigators of the International Criminal Court.⁷ The US rejection of an ICC investigation into allegations of possible war crimes related to detainee abuse by US forces in Afghanistan is not new.

This is a use of sanctions, however, not against war crime suspects, human rights violators, or corrupt leaders, but against international civil servants carrying out their responsibilities to investigate war crimes: this action crosses a new line. It is naked aggression against the very fabric of the international system, as put by David Scheffer, ASIL Vice President and the First US Ambassador at Large for War Crimes: “This Executive Order will go down in history as a shameful act of fear and retreat from the rule of law.”⁸

The long-standing alliances of the United States have not been immune. The Trump administration has called into question the 71-year-old military alliance, NATO, leading some to speculate. The announcement of withdrawal is an October surprise in the lead-up to the imminent election; there has been deep criticism of the European Union, with President Trump, most recently, claiming it was formed in order to take advantage of the United States. Last quarter, President Trump announced a unilateral withdrawal of US troops from Germany without informing Germany of his decision. Throughout this administration, Status of Forces agreements have been the subject of both disparagement and disavowal around the world. Democracies are under pressure. Freedom House reported that of the 41 countries consistently ranked free from 1985 to 2005, 22 have registered net declines in freedom over the last five years.⁹ Again, we see threads of this in our past. The 1930s economic pressures in the form of enormous debt, stagnant wages, chronic unemployment, and extreme inequality eroded or helped to erode the foundations of democracy and international cooperation, tilting popular support, in some sense, to faster them. Today, ultra-nationalists are ascendant across the democratic world, and increasing economic divides and income inequality may contribute to similar trends towards nationalism and extremism. So, what does this mean for the international rule of law? Are we at the moment of its unmaking?

⁶ Oona A. Hathaway, *Reengaging On Treaties And Other International Agreements (Part I): President Donald Trump’s Rejection of International Law*, Just Security (Oct. 2, 2020) <https://www.justsecurity.org/72656/reengaging-on-treaties-and-other-international-agreements-part-i-president-donald-trumps-rejection-of-international-law> (last visited May 6, 2025).

⁷ *US Sanctions on the International Criminal Court*, Human Rights Watch (Dec. 14, 2020) <https://www.hrw.org/news/2020/12/14/us-sanctions-international-criminal-court> (last visited May 6, 2025).

⁸ Ambassador David Scheffer, *The Self-Defeating Executive Order Against The International Criminal Court*, Just Security (Jun. 12, 2020) <https://www.justsecurity.org/70742/the-self-defeating-executive-order-against-the-international-criminal-court> (last visited May 6, 2025).

⁹ *Countries and Territories*, Freedom House <https://freedomhouse.org/countries/freedom-world/scores> (last visited May 6, 2025).

I make three observations with a view toward suggesting that while we may be at a crossroads, the unmaking is not upon us. First, one moment, whether comprising a day or span of years, does not define the story of international law. It's been a long journey, and it is not over. One cannot look back on the vicissitudes of history and conclude that international relations are subject to inevitable progressive development towards peace and justice. Perhaps that is the hardest lesson. There will be forward progress and backward steps. Our traditions of civility and reasoned argument can be a poor match for a public discourse that has become ever more strident, divisive, and polarized. In some moments, it may feel that the country is no longer guided by the ideals that animated us as recently as the mid-20th century. But as I've just recounted in the story of the making of the international rule of law, this is not a new phenomenon. From its earliest days, the society and others have been swimming against strong currents of isolationism, parochialism, and militarism; despite powerful forces arrayed in opposition to its vision, the society helped to mobilize sentiment to promote the ideal of a community of nations living peacefully under the rule of law. The 20th Century severely tested this ideal with appalling conflicts and seismic shifts in global power. However, our leaders did not abandon their efforts to establish international relations on the basis of law and justice.

Some might argue that the world is not much better off now than we were before the ascendance of the post-war international legal order. Even if imperfect, the post-war order has fostered the most peaceful and prosperous period in human history, and its absence would make the world a more dangerous place. International law and institutions may not be able to perfect the world, but they are an indispensable instrument of progress. As Dag Hammarskjöld famously said, "The United Nations was not created to bring us to heaven, but in order to save us from hell."¹⁰ His words resonate today. The international rule of law does not guarantee that everything will be all right, but it helps to prevent tyranny. It helps to protect the vulnerable. It helps to avert war. It helps us think about what is fair, and allows us to seek justice when confronting true global problems like racism, climate change, corruption, mass migration, infectious disease and armed conflict, just to name a few.

Second, the backward steps do not constitute a failure of the whole enterprise; setbacks, even if painful, can prompt us to reassess our philosophies and strategies. Setbacks allow us to take a hard look at where international law institutions work better than others, and adjust our sails as needed. When the League of Nations proved too narrow and limited in powers to be up to the task of preventing another global war, the structure of the United Nations was conceived when the massacres in Cambodia, the former Yugoslavia, and Rwanda took place. They gave new urgency to the idea of a permanent International Criminal Court almost 45 years after the idea was first considered in the context of the Genocide Convention in 1948. When the reach of international law as ordering the relations between states proved inadequate, a different framework of human rights norms developed to regulate state conduct, including vis-à-vis individuals within a state's borders. Whatever the adjustments are, the clear-eyed vision of a better world remains undiminished.

Third, and finally, there are no historical inevitabilities, in my view, in the story of international law. History is replete with examples of how the work of individuals and institutions made a difference. The Paris Agreement was a remarkable example of international law being used to help solve a global problem. While serving in the Obama Administration, I was struck by the regular efforts to ensure that US actions adhere to international law and the attempt to build the rule of law around the world. Just as the United States led the world towards the rule of law in the past, a resurgent US focus on

¹⁰ *Dealing with Crimes Against Humanity*, Dag Hammarskjöld Foundation (Mar. 2011), <https://www.daghammarskjold.se/publication/dealing-crimes-humanity> (last visited May 6, 2025).

international law could have a beneficial impact across the globe. In addition, each of us has a role to play in defending the rule of law, including effectively communicating the international rule of law to those not just within our circles or in our echo chamber. Some may not agree with all of the trappings of the liberal international order, but there is much upon which to agree in the United States, for example, common ground can be found and is not determined by one's political party. The United States has long used treaties and international institutions, very often with a consensus between Democrats and Republicans, to protect our values, our interests, and our influence. There exists a common understanding that a world that relies on a system of laws and shared norms is safer and more secure, and that we cannot expect other countries to live up to those norms if we do not do so. For example, some of the strongest allies in the critical work of the Obama administration in securing the fundamental protections enshrined in the Convention Against Torture came from Republican colleagues and friends, including some in the armed forces, who agreed that the best way to protect our men and women on the battlefield was to make the legal rules protecting them iron clad.

In 2017, when President Trump raised the prospect of relying on a torture program, 176 retired flag officers, including 33 four-star generals, wrote to him, pointing out that torture weakens US national security, is unlawful under domestic and international law, and violates our core values as a nation. They said, and I quote, “Our greatest strength is our commitment to the rule of law and to the principles embedded in our Constitution, our service men and women need to know that our leaders do not condone torture or detainee abuse of any kind.”¹¹ Ultimately, President Trump did not announce a torture program.

In short, one of the most important things we can do to contribute to a more peaceful world is to bridge the gaps between us and focus on ways to move forward regardless of political affiliation. And so, I end where I began, in paying respect to the critical work of our institutions. A century after its founding, ASIL is proudly bipartisan and stands for both established values and progressive ideals. The American Branch of the International Law Association, since its founding in 1921, is part of a preeminent network involved in developing and restating international law. Our organizations draw from the very best of academia, government, the judiciary, private practice, international institutions, and civil society. Our organizations are invaluable in finding answers to the questions we face as a global community, and their potential for shaping the discourse is almost boundless. We may have always been swimming upstream, but we have come a long way already; I, for one, count as a formidable force in support of the international rule of law. I want to thank you so much for your kind attention.

¹¹ *Retired Military Leaders to Trump Letter on Torture*, The New York Times (through DocumentCloud) (Jan. 6, 2017), <https://www.documentcloud.org/documents/3259263-Retired-Military-Leaders-to-Trump-Letter-on> (last visited May 6, 2025).

International Law Weekend Midwest 2021

International Law Weekend Midwest 2021 was held from September 24-25, 2021, at Tinkham Veale University Center, Case Western Reserve University, 11038 Bellflower Rd, Cleveland. The theme was “The Academy and International Law: A Catalyst for Change and Innovation.” Case Western Reserve University School of Law organized the weekend. It featured an Opening Panel Discussion, Welcome Remarks, four panels, a Lunch Keynote Speech, and Closing Remarks. This symposium explored how academia has influenced war crimes prosecutions, peace negotiations, and the pursuit of human rights since the Second World War.

On Friday, September 24, 2021, the symposium began with an Opening Panel Discussion featuring Judge Silvia Fernandez de Gurmendi (President, Assembly of State Parties of the International Criminal Court), Michael P. Scharf, and Jessica Wolfendale (Professor of Philosophy, Case Western Reserve University). Shannon E. French (Professor of Ethics, Case Western Reserve University) chaired. This was followed by the panel ‘Making an Impact: Alumni Panel of Case Western Reserve Journal of International Law Editors,’ co-chaired by Caroline Cirillo and Alireza Nourani-Dargiri.

On Saturday, September 25, 2021, the panels were:

- The Academy and Grotian Moments (chaired by Stephen Petras)
- 75th Anniversary of the Nuremberg Judgment: The Academy and War Crimes Prosecutions (chaired by Jennifer Trahan)
- The Academy and the War on Terrorism: A 20 Year Retrospective (co-chaired by Avidan Cover and Shannon French)
- The Academy and the Pursuit of Peace and Human Rights (chaired by Milena Sterio)

Mark Ellis (Executive Director, International Bar Association) gave the Lunch Keynote Speech. Associate Dean Avidan Cover gave the Closing Remarks.

International Law Weekend 2021

International Law Weekend 2021 was held online from October 28 to 30, 2021. The theme was “Reinvesting in International Law.” The American Branch of the International Law Association organized the Weekend. It featured thirty-two panels that explored where the international legal order is meeting expectations and where it is falling short. It also discussed where we require more robust legal frameworks and where, perhaps, we need less regulation; it also answered the question: How should we tailor our reinvestment in international law?

The Presidential Opening Plenary was held on Thursday afternoon, October 28, 2021, and was titled “President’s Opening Plenary: Reinvesting in International Law.” Presidential Opening Plenary speakers included Pablo Arrocha Olabuenaga (Legal Adviser, Permanent Mission of Mexico to the United Nations), Nicola Bonucci (Partner, Paul Hastings LLP; former Director for Legal Affairs, OECD), Ambassador Nazhat Shameem Khan (President, UN Human Rights Council), and Dire Tladi (Member, International Law Commission; Professor, University of Pretoria; President, International Law Association (South Africa)). Leila Nadya Sadat chaired this panel.

On Thursday, October 28, 2021, the panels were:

- Debating a WTO TRIPS Waiver for COVID (chaired by Sean Flynn and Peter K. Yu)
- Disappearing Land and Displaced Persons: Climate Change and International Law (chaired by Floriane Lavaud)
- Surveillance, Privacy, and Human Rights (chaired by Peter S. Margulies)
- Reinvesting in the Legitimacy and Fundamental Principles of Customary International Law (chaired by Mortimer Sellers)

On Friday, October 29, 2021, the panels were:

- Traveling Judges on International Commercial Courts (co-chaired by Pamela Bookman and Alyssa King)
- Outsourcing International Responsibility (chaired by MJ Durkee)
- Externalization, Responsibility Sharing and the Global Compact on Refugees (chaired by Madeline Garlick)
- Global Governance and World Health Organization Reform in the Wake of COVID-19 (chaired by Frederic Abbott)
- The Geopolitics of Economic Competition (chaired by Harlan Grant Cohen)
- International Organizations in the Digital Age (chaired by Christiane Ahlborn)
- The Meaning of Diversity, Equity and Inclusion in International Law (chaired by Sohini Chatterjee)
- When Domestic Courts Evaluate Foreign Legal Systems: The Case of China (chaired by Martin Flaherty)
- Sustainability & Ethical Trades in Times of Uncertainty: The Role of Corporate Social Responsibility Between Self-Regulation and Legal Obligations (co-chaired by Irene Calboli and Jessica Simonoff)
- Back in the Game: Assessing the United States’ Reengagement in the Paris Agreement and Climate Governance (chaired by Myanna Dellinger)

- Prosecuting the Crime of “Ecocide” at the ICC and Elsewhere (co-chaired by Milena Sterio and Julie Fraser)
- The Role of Domestic Actors in Fulfilling the Genocide Convention’s Objectives (chaired by Wes Rist)
- Investment Law and the Future of International Energy Governance (chaired by David Attanasio)
- Immunity or Impunity? Recent Challenges to the Framework for Diplomatic and Consular Immunities (chaired by Conway Blake)
- Renewing and Improving the United States’ Relationship with the International Criminal Court (chaired by Jennifer Trahan)
- Beyond Fragmentation: Cross-Fertilization, Cooperation and Competition among International Courts and Tribunals (chaired by Chiara Giorgetti)

Professor Oona Hathaway (Gerard C. and Beatrice Latrobe Smith Professor of International Law & Counselor to the Dean, Yale Law School) gave the Lunch Keynote Address titled “War Beyond Law: A Threat to the International Legal Order”. Leila Nadya Sadat and Nawi Ukabiala co-chaired the Keynote. Friday, October 29, 2021, concluded with International Law Trivia, co-hosted by Madaline George and Michael P. Scharf.

Saturday, October 30, 2021, opened with a Member’s Meeting and the ABILA Annual Award Presentations. Fatou Bensouda, recipient of the Outstanding Achievement Award, gave a keynote address. She was introduced by Leila Nadya Sadat. James Nafziger (Willamette University College of Law) received the Charles Siegal Distinguished Service Award. The ABILA Book of the Year Award went to Christina M. De Vos for *Complementarity, Catalysts, Compliance: The International Criminal Court in Uganda, Kenya, and the Democratic Republic of Congo*.

On Saturday, October 30, 2021, the panels were:

- Rethinking the Service of Documents in Cross-Border Transitions (co-chaired by Ronald Brand and Louise Ellen Teitz)
- Small Satellites, Big Possibilities: How to Build a Fair Legal Regime for a Developing Technology (chaired by Catherine Amirfar)
- Minding the Gaps: Strengthening Accountability for War Crimes Under U.S. Law (chaired by Gabor Rona)
- Commerce & Economics in Islamic Social Contexts: Past, Present & Future (chaired by Tabrez Ebrahim)
- Reinvesting in the Foundations of Public International Law (chaired by Judge María Teresa Infante Caffi)
- Environmental Degradation and Indigenous Rights: Is International Law Fit for Purpose? (chaired by Merryl Lawry-White)
- Leveraging the UN for Greater Rule of Law Protections in MENA and Beyond (chaired by Mai El-Sadany)
- The Role of the ICJ in State Intervention by Non-Parties to a Dispute (chaired by Floriane Lavaud)
- The Meaning of Silence in International Law (chaired by Neha Jain)

- Reflecting on Modern Challenges in the Settlement of Environmental Disputes (chaired by H.E. Judge Ida Caracciolo)
- Enforcing the Rights of Children in Migration (chaired by Warren Binford)
- 20 Years after 9/11, The Fall of Afghanistan (chaired by David Stewart).

The American Branch extends its gratitude to the 2021 ILW Program Committee, composed of: Amity Boye (Co-Chair, White & Case LLP), Nawi Ukabiala (Co-Chair, Debevoise & Plimpton LLP), Julian Arato (Co-Chair, Brooklyn Law School), Carolina Arlota (University of Oklahoma College of Law), Pamela Bookman (Fordham University School of Law), Kathleen Clausen (University of Miami School of Law), J. Benton Heath (Temple University Beasley School of Law), Gabrielle McKenzie (Debevoise & Plimpton LLP), Milena Sterio (Cleveland-Marshall College of Law), Frédéric Sourgens (Washburn University School of Law), and Peter Tzeng (Foley Hoag LLP).

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INTERNATIONAL LAW WEEKEND 2021
ONLINE – HOSTED BY ARBITRATION PLACE
OCTOBER 29, 2021

KEYNOTE ADDRESS: WAR BEYOND LAW: A THREAT TO THE
INTERNATIONAL LEGAL ORDER

OONA HATHAWAY

The subject of my talk today is ‘War Beyond Law: A Threat to the International Legal Order.’ I want to cover three basic topics today. First, I want to lay the basic groundwork for the prohibition on war and the modern legal order, just laying out the foundation of the international legal system we are lucky enough to enjoy. But I want to talk about some of the key challenges to that system, particularly cyber operations, partnered operations, and self-defense, particularly the expansive use of self-defense over the last several decades. And then, I want to conclude by looking ahead and inviting some conversation with the group here about things that we can do to try and address and meet these really important challenges to not only the prohibition on war, but to the foundational principles of the international legal order.

First, I want to take on the prohibition of war and the modern legal order. So, as Leila mentioned, I wrote a book with my co-author, Scott Shapiro: ‘The Internationalists: How a Radical Plan to Outlaw War Remade the World.’¹² And the central argument of that book was that in what we call the Old World Order, war was perfectly legal and legitimate might made right. The foundation of the international legal order was that states could use war to resolve their disputes between one another, and that there was a key change that took place in 1928, first with the Kellogg-Briand Pact, and then throughout the interwar period, that the re-instantiation of those rules and reaffirmation of them in the United Nations Charter. And this was, we argue, a key break from the past; this idea that states could no longer go to war with one another was essential to what we have come to know as a modern legal order. The 1928 Pact, as I said, was reinforced in the lead into World War II. The Atlantic Charter declared that nations of the world must come to the abandonment of the use of force. This principle was initially stated in the Kellogg-Briand Pact and was reaffirmed in the Atlantic Charter, which then became the foundation of the Declaration by the United Nations - the first use of the term United Nations in this fundamental declaration - where several states joined this commitment, along with the US and the UK.

Then, it became a central principle of the United Nations Charter in 1945, and we see it in Article 2(4), which states all members shall refrain in their international relations from the threat or use of force. There are very limited exceptions to this requirement: Security Council authorization under Chapter Seven, self-defense under Article 51, or consent of the host state. War used to be perfectly legitimate for a range of different purposes: debt collection, resolving disputes, interfering with trade relations, and a range of possible causes. The modern legal order substantially limits the purposes for which states can use war and limits the instances in which they can unilaterally resort to war. And that has been foundational to our modern legal order. I lay this out in more depth in the book, and I don't

¹² OONA A. HATHAWAY AND SCOTT J. SHAPIRO, *THE INTERNATIONALISTS* (2018).

want to go into it in too much depth here. Still, the central claim is that the prohibition on force is not just one rule among many. It is the foundational principle of our international legal order that once force became prohibited, when states could no longer unilaterally resort to force, that forced a shift in what had been a long-accepted principle that states could conquer territory from one another and keep it, which was legal and legitimate. Once war was no longer legal, conquest also was no longer legal.

In a world where war was legal, there was no such thing as a crime of aggression. Aggression couldn't be criminalized. And in fact, after World War I, there was an attempt to try Kaiser Wilhelm II, and the Dutch wouldn't turn him over, because the argument that they made, which was right, was that there was nothing illegal about waging an aggressive war after World War II. By contrast, when there was a decision to try the Nazis, it was permissible to try them for the crime of aggression, because, in the interim, Germany had signed the Kellogg-Briand Pact on the prohibition of war, which did make war illegal, and thus provided the foundational principle that was necessary for the prosecution at Nuremberg. Whereas war was perfectly legal and legitimate, and in fact, gunboat diplomacy was legal and legitimate, a state could be forced into a treaty at the point of a gun and then be held to the requirements in the treaty.

Under the Old World Order, once war was no longer legal and legitimate and states couldn't resort to war unilaterally, coerced agreements also became illegal. You see this in a variety of documents, but most notably in the Vienna Convention on the Law of Treaties, and the Hersch Lauterpacht commentary,¹³ which indicates that it was necessitated by the evolution of the prohibition on war, that once war was no longer permitted, then the threat of war to bring about a treaty obligation was also prohibited. Last but not least, in a world where war was legal, states couldn't use economic sanctions against belligerents without inviting war against themselves with violence, without violating their obligations of neutrality. In a world where war was now illegal and illegitimate, states could use economic sanctions against belligerence without violating their duties of neutrality. So, the key point for these purposes is that the prohibition on war is not just *a* principle. It is a foundational principle of the international legal order, which means that the challenges we're facing today are all the more important. They're not just threats to one legal principle. They are threats to the international legal order as a *whole*.

Now, this list that I'm going to talk about today is not exhaustive, but I mean to illustrate what I think are some of the key recent developments that really put this prohibition at risk. And then, I'll speak very briefly about what I think might be some ways ahead in terms of addressing these challenges. But I will also invite all of you to jump in and offer your ideas. So first, cyber operations. As I'm sure those who are here know, most cyberattacks to date have not been significant enough to trigger the Article 2(4) prohibition on use of force, or Article 51 requirement of an armed attack. Most are what's called 'below the threshold attacks,'¹⁴ meaning they don't meet that threshold for Article 51, but what is distinctive about this era is that there has been a massive expansion of these kinds of below the threshold attacks and even a few cyberattacks that have edged up to, and perhaps even tripped over, the line for a prohibited use of force under Article 2(4). And what we're seeing is this exploitation of

¹³ See, for example: Martti Koskenniemi, *Lauterpacht: The Victorian Tradition in International Law*, 2 EUR J. INT'L L. 215 (1997).

¹⁴ Juliet Skingsley, *Countering Threats Below the Threshold of War*, Chatham House (Dec. 2, 2020) <https://www.chathamhouse.org/2020/12/countering-threats-below-threshold-war> (last visited May 6, 2025).

what has been a fairly gray space in international law by states increasingly using cyber operations to do things that they can't do through conventional means.

This is an image of the centrifuges at the Natanz facility in Iran.¹⁵ Famously, there was a cyberattack that's been generally attributed to Israel in the US against the Natanz facility, which caused these centrifuges to break at a faster rate than they otherwise would have and is deemed as a remarkably successful cyberattack at setting back the enrichment efforts of Iran towards developing enough material for a nuclear weapon.¹⁶ It is also one of the first serious cyberattacks that is known of from a state or multiple states against another state, and one that still is mentioned as kind of one of the cyberattacks, because it caused millions and millions of dollars of damage that may have even edged up to the line prohibiting prohibited by Article 2(4) because it caused so much property damage and actually caused physical destruction of devices at that facility.

One of the more recent ones is the SolarWinds attack, which undermined not just private facilities but government computer systems across the United States and has been attributed by the United States to Russian foreign intelligence services.¹⁷ It is one of many similar cyberattacks that have been attributed to Russia by the United States, and again illustrates the kind of increasing use of these cyber techniques by states against one another to undermine their government facilities and capacity to govern. And Joe Biden, this summer, said that if the United States ended up in a real shooting war with a major power, it could be as a result of a cyberattack on the country.¹⁸ So, what begins in the cyber arena doesn't necessarily stay in the cyber arena. Suppose there is a significant cyberattack, a shutdown of the electrical grid, or other significant impact on critical infrastructure. In that case, states may be tempted to respond with kinetic force if, in fact, a cyberattack did trip over the line to be an Article 51 attack, then a state would not be prohibited from using kinetic force to respond to it. But even these low-level attacks coming at a regular tempo are creating a great deal of difficulty for states, and states are having difficulty figuring out how to respond to them, and this remains an area where the law is not well worked out.

The UN has two ongoing efforts to try and continue to spell out the law in this space. Neither of them has come to very significant conclusions as of yet. There has been an agreement that international law does apply in cyberspace, which is a significant development and an important first step. But exactly how do they apply? What kinds of operations are permitted or prohibited? That remains still uncertain and undeveloped, and remains a bit of a gray space in international law. And as long as it remains a gray space, it will be exploited by states, and it is being exploited by states, creating this real danger of not just ongoing conflict in the cyber arena, but potentially spilling over into kinetic warfare.

¹⁵ Yeganeh Torbati, *Iran says building 3,000 advanced centrifuges*, NBC News (Mar. 3, 2015) <https://www.nbcnews.com/news/world/iran-says-building-3-000-advanced-centrifuges-flna1c8660783> (last visited May 6, 2025).

¹⁶ *Iran vows revenge for 'Israeli' attack on Natanz nuclear site*, BBC News (Apr. 12, 2021) <https://www.bbc.com/news/world-middle-east-56715520> (last visited May 6, 2025).

¹⁷ Dina Temple-Raston, *A 'Worst Nightmare' Cyberattack: The Untold Story Of The SolarWinds Hack*, NPR (Apr. 16, 2021) <https://www.npr.org/2021/04/16/985439655/a-worst-nightmare-cyberattack-the-untold-story-of-the-solarwinds-hack> (last visited May 6, 2025).

¹⁸ Nandita Bose, *Biden: If U.S. has 'real shooting war' it could be result of cyber attacks*, Reuters (Jul. 28, 2021) <https://www.reuters.com/world/biden-warns-cyber-attacks-could-lead-a-real-shooting-war-2021-07-27> (last visited May 6, 2025).

The second area I wanted to say a few words about is partnered operations. There's been a massive increase in the use of partners to carry out operations around the world. One example of this is the US has partnered for several years with the Syrian Democratic Forces. And in Syria, these are groups that are Kurdish forces, that have been working to try and protect themselves, but also have been fighting against ISIS. The US has provided arms, has provided intelligence, has provided even embedded forces, has provided funding, and various kinds of support to the Syrian Democratic Forces. One of the questions that remains to be answered is, what kinds of legal responsibility does the United States then have for the actions the Syrian Democratic Forces take if, for instance, there's abuses of detainees? Is the United States responsible for that if the Syrian Democratic Forces go to war against Assad's regime, which is still the legitimate governing force? Is that imputed to the United States? Is it responsible for that? And does it, in a sense, then become an Article 2(4) violation? Potentially, and because the Syrian Democratic Forces hold territory in the northern part of Iraq and the US is providing significant support to those Syrian Democratic Forces, arguably, they are engaged in a fight against Assad and his forces in the US. Providing support for actions that it couldn't directly take raises real questions as to whether this is a big loophole for the prohibition on force, and whether it creates challenges both for *jus ad bellum* and *jus in bello* in the modern era. It's not just support for non-state actor partners; it's support for state partners as well.

One example is the Saudi-led coalition that has been engaged in military operations in Yemen for a long time, and partners with several states, us included. And these forces, these states, are providing support to the Saudi coalition as it's engaged in military operations throughout the country. Those military operations included some strikes with major, catastrophic international humanitarian effects. Cholera treatment plants have been blown up;¹⁹ busses have been blown up, and weddings have been hit.²⁰ What responsibility do states enabling the Saudi-led coalition have for those international humanitarian law violations? What limits do partner states need to put on their partners' actions, and what kinds can that take? What are the legal responsibilities?

There's some development of the law in the area of state responsibility. We still draft articles on state responsibility, which remain one of the most important texts we rely on but remain to be filled out.²¹ The rules still are not fully adequate. These rules, I think, once again, the uncertainty about the obligations that apply to states that are partnering with other states, and how their actions then are imputed to the states that are providing that support, create this gray space that a lot of states are exploiting, and that then becomes a way of undermining the prohibition of force in really damaging ways.

The last one I want to spend the most time on is self-defense. It is the area in which I think the greatest challenges have been faced because we've seen a massive expansion in the scope of activities that fall within what is claimed to be a legitimate basis for military operations. You are probably familiar with Article 51 of the United Nations Charter, which gives states the right to use military force in self-defense. This is an exception to Article 2(4)'s prohibition on the use of force, and it's confined, though, to instances where states have been subject to an armed attack. Now, there's been a great deal of work

¹⁹ *Yemen: Airstrike hits MSF cholera treatment center in Abs*, Doctors Without Borders (Jun. 12, 2018) <https://www.doctorswithoutborders.org/latest/yemen-airstrike-hits-msf-cholera-treatment-center-abs> (last visited May 6, 2025).

²⁰ *The War on Yemen's Civilians*, Campaign Against Arms Trade (Aug. 25, 2023) <https://caat.org.uk/homepage/stop-arming-saudi-arabia/the-war-on-yemens-civilians> (last visited May 6, 2025).

²¹ Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries (2001).

over time questioning whether it really is meant to limit the instances of an actual armed attack. If there's an imminent attack, there's general agreement that if an attack really is imminent and there's no other way to prevent it, an act of self-defense under Article 51 is permissible. But that has been expanded to entail a whole range of activities where defense is beginning to look an awful lot like offense.

Let me give a few examples. When Russia invaded part of Ukraine, Crimea, and incorporated it into Russia, to the extent that it attempted to offer legal justification and, to be truthful, it didn't always make an effort to provide significant legal justification - they initially denied involvement - but when it did accept its involvement, the key justification that it provided was effectively a self-defense argument that it was acting in defense of Russian military personnel in Crimea. The Black Sea Fleet has long been housed in Crimea, and Russian citizens in Crimea were threatened, was the claim. So, it's the 'defense of nationals' claim. It was one of the key justifications that was given, self-defense on behalf of nationals and on behalf of Russian forces. The United States has championed the so-called unwilling and unable test, but it's really important to point out that only 10 states have explicitly endorsed it. I'm drawing from Elena Chachko and Ashley Deeks, who go through and categorize all the states that have explicitly endorsed this principle, voiced soft support, and opposed it.²² Even if you take every state that has voiced a view, it's still a radical minority of states that have voiced any view whatsoever, one way or the other on the unwilling and unable test, and the 10 states that have come out in favor include a lot of states that use force, who have used this to justify their use of military force. The states we don't hear so much from are those on the receiving end of that use of force, or the less likely to use force themselves.

For instance, one example of a case where the US relied on this justification was in its use of force against ISIS directly, not only through SDF forces, but directly through direct strikes against ISIS in northern Syria. This is Article 51 letter²³ that was filed by the United States explaining the justification for military force in the north and throughout Syria in 2014, and in August and September 2014, explaining that this was necessary to defend the United States because the regime of Syria was not willing and not able to prevent the threat to the United States posed by ISIS. We've seen that the US is not alone in taking the position that it can file Article 51 letters against non-state actor groups.²⁴ We've seen a real increase in the use of Article 51 letters filed against non-state actors. Almost all of those rely on some version of the unwilling and unable test, because there are instances where you're using military force against a non-state actor group in a state that has not consented to the use of force. If the state has consented to the use of force, you don't need to file an Article 51 letter.

The number of these claims has gone up radically in the last several years. We even see instances where not only are states using a justification of self-defense against non-state actor groups, but the US, in what I think is a fairly troubling development, used the self-defense justification in defense of non-state actor partners in northern Syria. So this is combining the partnered operations and self-defense into one new idea, which is we're working through these non-state actor groups, the Syrian Democratic

²² Elena Chachko and Ashley Deeks, *Which States Support the 'Unwilling and Unable' Test?*, Lawfare (Oct. 10, 2016) <https://www.lawfaremedia.org/article/which-states-support-unwilling-and-unable-test> (last visited May 6, 2025).

²³ *UN Documents for Syria: Security Council Letters*, Security Council Report https://www.securitycouncilreport.org/un_documents_type/security-council-letters/page/8?ctype=Syria&cbtype=syria (last visited May 6, 2025).

²⁴ Ignaz Stegmiller, *The Right of Self-Defence under Article 51 of the UN Charter against the Islamic State in Iraq and the Levant*, 90(3/4) DIE FRIEDENS-WARTE (J. INT'L PEACE & SECURITY) 245 (2015).

Forces in Northern Syria, and they were coming under attack from the Assad government and the US justified responding to those attacks as an act of self-defense, even though we weren't defending ourselves. We're defending non-state actor groups that were, for all intents and purposes, acting illegally within the state, not with the consent of the Syrian Government, obviously, because of the Syrian government that was attacking them. This creates a kind of spiraling of the self-defense justification in ways that, even in this instance, we had to de-conflict with the Russians, or was a call to the Russians to be clear that there was a de-confliction effort. Whenever we're going directly against the Syrian government, it creates real possibility of coming into direct conflict with Russia, because Russia, of course, is partnering with the Syrian government in the same way that we're partnering with non-state actor groups in northern Syria.

These justifications are not limited to the US. I could make a similar set of arguments about several states. Here's one where I argued in *The Washington Post* that Turkey, when it intervened against Kurdish groups in Northern Syria, was doing so on the exact same self-defense justification that the US has been using.²⁵ The irony of ironies is that the US is using self-defense to support and defend the Syrian Democratic Forces, and Turkey is using a justification of self-defense to attack those very same forces. The danger here, of course, is the possibility of bringing NATO Allies into direct conflict with one another, both of them claiming that they're acting in self-defense, and this creates some very dangerous situations in northern Syria. I think this illustrates that the self-defense justification has really gotten out of control.

We saw this as well when the Trump administration killed General Soleimani in Iraq. He was an Iranian general. He was located in Iraq, and the US invoked self-defense as a justification for the attack. Even Republican senators walking out of classified briefings said they didn't buy the justification that was being given. Several arguments have been made that this was not a proper use of self-defense, and this is a quote brought from the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions that shows the concern that the Special Rapporteur had;²⁶ that this escalation, this use of self-defense, to use force in a third state against a leading figure of the government creates a real danger of undermining the prohibition on use of force. The Biden Administration has continued, to some degree, this view of self-defense, taking strikes in Syria against Iranian-backed militias that had engaged in attacks on American forces in on-base housing, killing one non-American contractor. The justification after the second response: The Pentagon spokesman said the US acted pursuant to its right to self-defense, but again, most international lawyers who commented on this thought this didn't seem to meet the requirements of self-defense. It wasn't clear there was an imminent attack. It wasn't clear it was, in fact, necessary, though they claimed that it was necessary, and it's not clear that this actually meets the justification of requirements for self-defense. It continues to open the door to increased use of self-defense as a justification for the use of military force in instances that really may be inappropriate.

Looking ahead, what do we do about all of this? Let's say I'm right. Let's say that the prohibition on the use of force is really this essential principle of the international legal order. It's foundational to the international legal order and to the peace that we have known since World War II. It has not been

²⁵ Oona Hathaway, *Turkey is violating international law. It took lessons from the U.S.*, *The Washington Post* (Oct. 22, 2019) <https://www.washingtonpost.com/outlook/2019/10/22/turkey-is-violating-international-law-it-took-lessons-us> (last visited May 6, 2025).

²⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Statement by H. E. Mr. Esmail Baghaei Hamaneh DOC/A/HRD/44/38 (Jul. 9, 2020).

perfectly peaceful. Obviously, there have been instances of military force being used, but much more peaceful than the eras that came before, and these challenges put at risk that prohibition and raise the possibility that we might be headed towards a time of greater conflict between states and even perhaps greater conflict between great powers. What do we do about that? I think that this moment is an important moment for critical reflection. So not only have we been seeing this gradual escalation of a variety of areas of challenge to the prohibition on the use of force, but the decision of the United States to withdraw from Afghanistan and the rapid collapse of the Afghan government raises real questions about whether this, the techniques, the tools, the strategies that we have been deploying to fight terrorism, are the right ones, and should be a moment for us to step back and ask whether we have been pursuing our aims of keeping our population safe from terrorist activity.

First and foremost, we must recognize that force is not the only and rarely the best counterterrorism tool. Yes, there is some place for force in a current counterterrorism policy, but it's become too easy to rely too heavily on force as a tool. A lot of social scientific research makes it clear, for instance, that one of the key predictors of whether a city is going to fall to terrorist attacks and terrorist groups is whether the government is legitimate in that city, whether there's rule of law, whether there's a sense that justice is being fairly provided to all members of the population, whether the government can provide basic services that are needed by the population, and where that is not present, these towns are much more likely to fall to terrorist groups that come and invade. We need to be thinking about whether, in fact, the best thing we can do is fight these groups once they take hold or whether we should be investing more fully in foreign aid, in justice reform, rule of law reform, and a variety of kinds of reforms in these areas, as opposed to simply relying on the use of force. Maybe we should take some of the money that we've been spending on defense and the Pentagon and move it over, as even some generals have endorsed, and put it into foreign aid to provide greater support for schooling and basic social services in these places.

Second, since I'm speaking to a group of international lawyers, scholars, and practitioners, I think one of the important things that we can do is to push is the is to fill in these gray spaces because one of the reasons that states are exploiting these areas is because these remain relatively underdeveloped bodies of law. We can clarify those legal rules and push back on unsubstantiated and unsupported legal claims. The general public's not really in a position to know what international law allows and doesn't allow, and it needs interpreters. That's a role that we all can play, and I think we all should play and take some responsibility for when the state takes an action to call out actions that we think are not permissible, that we believe are inconsistent with the UN Charter, that we think might be illegal. That's an important role that we, as experts in international law, can play.

And last, we need to broaden the scope of voices and views on the developing law and the use of force. We tend to rely too heavily on those states that are well-resourced, that are in a position to put their views about the use of force out there, and those happen to be, in many cases, the very same states that are using military force. And so, we're seeing just a narrow slice of views of states who happen to have a very particular set of views about use of force, and we, as I mentioned, with the unable and unwilling, there are only 10 states that have taken sort of explicit views endorsing the unable and unwilling test. The vast majority of states either haven't expressed a view or have expressed a view of either very tepid support, in the case of a very small number of states, or opposition. Still, the vast majority of states have been silent, and they've been silent because they don't have an easy way to articulate their views. We need to do a better job of getting a range of views on the use of force,

particularly at a time when the law is very much in flux and where there are areas of law that haven't yet been fully filled out. We need a broader range of voices on these issues.

International Law Weekend Midwest 2022

International Law Weekend Midwest 2022 was held on September 30, 2022, at Tinkham Veale University Center, Case Western Reserve University, 11038 Bellflower Rd, Cleveland. The theme was “International Law and the New Cold War.” Case Western Reserve University School of Law organized the weekend. It featured Welcome Remarks, a Keynote Speech, four panels, a Lunch Keynote Speech, and Closing Remarks. This symposium examined how the Ukraine crisis and other recent events have transformed international law and international institutions.

Hon. Sean Murphy, Member of the U.N. International Law Commission and Manatt/Ahn Professor of International Law at George Washington University Law School, gave the first Keynote Speech. Hon. Beth Van Schaack, U.S. Ambassador at Large for Global Criminal Justice, gave the Lunch Keynote Speech.

On September 30, 2022, the panels were:

- The Role of International Law in the Russia/Ukraine Conflict (chaired by Stephen Petras)
- Power Shift: Security Council Paralysis and General Assembly Ascendancy (chaired by Anat Beck)
- Information Operations and the New Cold War (chaired by Avidan Cover)
- A New Era of International Courts and Tribunals (chaired by Michael P. Scharf)

Hon. Chile Eboe-Osuji, Distinguished International Jurist at the Lincoln Alexander School of Law at Toronto Metropolitan University and former President of the International Criminal Court, gave the Closing Remarks.

International Law Weekend 2022

International Law Weekend 2022 was held at the New York City Bar Association at 42 West 44th Street, New York City, on October 20, 2022, and Fordham University School of Law on October 21 to 22, 2022. The theme of the Weekend was “The Next 100 Years of International Law.” The American Branch of the International Law Association organized the Weekend. It featured thirty-five panels that asked: Which foundations from the last century of international law should remain in the next century, and which should be reimaged?

The Presidential Opening Plenary was held on Thursday evening, October 20, 2022, and was titled “President’s High Level Opening Plenary: The Next 100 Years of International Law.” Presidential Opening Plenary speakers were Fatou Bensouda (Gambia High Commissioner to the United Kingdom and the Commonwealth), Miguel de Serpa Soares (U.N. Under-Secretary-General for Legal Affairs), Christopher Ward SC (Immediate-Past President, International Law Association), and Ganna Yudkivska (Judge, European Court of Human Rights). Leila Nadya Sadat chaired this panel.

Following the Opening Plenary, the American Branch hosted its Centennial Gala at White & Case LLP, 1221 6th Ave, New York City. Hugh Verrier (Chair, White & Case LLP) gave welcome remarks. He was introduced by Amity Boye (Chief of Staff to the Chair, White & Case LLP; Vice-President, International Law Association (American Branch)). H.E. Judge Abdulqawi Ahmed Yusuf (International Court of Justice) gave the keynote address “The Development of International Law: Looking Backward to Move Forward.” He was introduced by Floriane Lavaud (Counsel, Debevoise & Plimpton LLP).

On Friday, October 21, 2022, H.E. Ambassador Beth Van Schaack (U.S. Ambassador-at-Large for Global Criminal Justice) gave the lunch keynote “The Biden Administration’s Approach to International Justice.” She was introduced by MJ Durkee (Associate Dean for International Programs, University of Georgia School of Law).

On Friday, October 21, 2022, the panels were:

- Recent Developments in International Immunities Law (chaired by David P. Stewart)
- ‘Whose is the Bed of the Sea?’ 1922-2022 and Beyond (chaired by Coalter Lathrop)
- Reproductive Rights: Where Do We Go From Here? (chaired by Shannon Selden)
- Is U.S. Ratification of Human Rights Treaties Obsolete? (chaired by Jamil Dakwar)
- The Role of Customary International Law in the Next 100 Years (chaired by Brian D. Lepard)
- Reforming the WTO for a Sustainable Future (chaired by Joel P. Trachtman)
- Practicum: Human Rights Claims and Counterclaims in International Energy Arbitrations (chaired by M. Imad Khan)
- Prosecuting the Crime of Aggression: Russia and Beyond (chaired by Jennifer Trahan)
- Civil War Peace Agreements: Interpretation, Implementation and Legal Context (chaired by Ambassador Susan D. Page)
- The ILC’s Work on Jus Cogens: Does Regional Jus Cogens Exist? (chaired by Christina M. Cerna)
- Emerging Trends of Private International Law for the Next Decades (chaired by Ronald A. Brand, Michael S. Coffee, and Louise Ellen Teitz)

- Beyond Rocket Science: Assessing the Role of Natural and Social Sciences in Galvanizing International Climate Action (chaired by Myanna Dellinger)
- From Policy Back to Principles: Refugee Protection under International Law & State (Non)-Compliance (chaired by Hannah R. Garry)
- The Crimes Against Humanity Treaty: Looking Ahead (chaired by Akila Radhakrishnan)
- Reforming the U.N. Security Council to Address Modern Challenges (chaired by Floriane Lavaud)
- The International Trade Regime's Foundations in an Era of Increased Geopolitical Conflict (chaired by Matthew Schaefer)
- Negotiating the Sustainable Future of Marine Biological Diversity in Areas Beyond National Jurisdiction (chaired by Daniel Stewart)
- Controlling Misimplementation and Misuse of Global Anti-Money Laundering Standards (chaired by David L. Attanasio)
- The Cybercrime-Cyberwar Continuum: State Responsibility and Accountability for Cyberattacks under International Law (chaired by Ashika Singh)
- The Vienna Convention on the Law of Treaties in Investor-State Disputes: History, Evolution, and Future (chaired by Diora Ziyaeva)

On Friday evening, October 21, 2021, the Permanent Mission of the State of Qatar to the United Nations at 809 United Nations Plaza, 12th Floor, New York.

Saturday, October 22, 2022, opened with a Member's Meeting and the ABILA Annual Award Presentations. Justice Richard Goldstone, recipient of the ABILA Outstanding Achievement Award, gave a keynote address. David P. Stewart (Georgetown Law) received the Charles Siegal Distinguished Service Award. The ABILA Book of the Year Award went to Tom Ginsburg for *Democracies and International Law*; the ABILA Award for a Book on a Practical or Technical Subject went to James A. R. Nafziger for *Frontiers of Cultural Heritage Law*; and the ABILA Book Award for a First-time Author went to Arif Ali and David Attanasio for *International Investment Protection for Global Banking and Finance: Legal Principles and Arbitral Practice*.

Professor Adrien Wing (Associate Dean for International and Comparative Law Programs and Bessie Dutton Murray Professor, Iowa University College of Law) provided the Lunch Keynote Address, "COVID & Global Critical Race Feminism." She was introduced by M. Imad Khan (Senior Associate, Winston & Strawn LLP).

On Saturday, October 22, 2022, the panels were:

- 100 Years of International Intellectual Property Law (chaired by Sean Flynn)
- The Fourth Environmental Era: Climate Justice (chaired by Enéas Xavier)
- Reimagining the System of World Organization: Are the UN's Principal Organs Performing Their Tasks? (chaired by Eirik Bjorge)
- Racism and the Crime of Apartheid in International Law (chaired by Milena Sterio)
- The Secret Life of International Law (chaired by Asaf Lubin)
- Accountability in Internet Governance (chaired by Rose Marie Wong)
- Law of the Rising Sea: Where Do We Go from Here? (chaired by Catherine Amirfar)
- Prosecutions and Accountability in Ukraine (chaired by Paul R. Williams)

- Prosecuting Sexual and Gender-Based Crimes at the ICC: An Expert Roundtable (chaired by Milena Sterio)
- The Legitimacy and Fundamental Principles of International Human Rights Law (chaired by Mortimer Sellers)
- Coercive Diplomacy in the Skies: Dispute Resolution Mechanisms and Legal Remedies for States (chaired by Marcelo Garcia)
- Should Climate Change Be Framed as a Security Issue? (chaired by Craig Martin)
- The Rush for Resources: International Legal Implications of Space Mining (chaired by Merryl Lawry-White)
- Growing Threats to the Human Rights of U.S. Transgender & Intersex Children (chaired by Warren Binford)
- Emerging Voices (chaired by Carolina Arlota and Lisa Reinsberg)

The American Branch extends its gratitude to the 2022 ILW Program Committee, composed of: MJ Durkee (Co-Chair, University of Georgia School of Law), M. Imad Khan (Winston & Strawn LLP), Floriane Lavaud (Debevoise & Plimpton LLP), Carolina Arlota (Columbia Law School), Pamela Bookman (Fordham Law School), Amity Boye (White & Case LLP), LaWonda Love (U.S. Income Tax – Enbridge Inc), Lisa Reinsberg (International Justice Resource Center), Lucia Solano (Permanent Mission of Colombia to the United Nations), Frédéric Sourgens (Washburn University School of Law), Milena Sterio (Cleveland-Marshall College of Law), and Isavella Vasilogeorgi (Department of Management Strategy, Police and Compliance, United Nations).

The American Branch also gratefully acknowledges the generous support of the following sponsors of ILW 2022: the American Bar Association – International Law Section, the American Society of International Law, ArbitralWomen, University of Baltimore School of Law, Benjamin N. Cardozo School of Law, Brill Nijhoff, Berliner Corcoran & Rowe LLP, California Western School of Law, Center for International Legal Education at the University of Pittsburgh School of Law, University of Chicago Law School, University of Connecticut Law School, Columbia Law School, Covington LLP, Dechert LLP, Debevoise & Plimpton LLP, Freshfields Bruckhaus Deringer LLP, Ford & Paulekas LLP, Fordham University School of Law, Georgetown Law, George Washington International and Comparative Law Program, University of Georgia, Harvard Law School, International Law Students Association (ILSA), Leitner Center for International Law and Justice, University of Nebraska College of Law's Clayton Yeutter Institute of International Trade and Finance, NYU School of Law, OGEMID, Oxford University Press, University of Pennsylvania Carey Law School, Santa Clara University School of Law, Seton Hall University School of Diplomacy and International Relations, Sidley LLP, Silicon Valley Community Foundation, Racial Equality for Arbitration Lawyers, Validity, White & Case LLP, and Winston & Strawn LLP.

INTERNATIONAL LAW WEEKEND 2022
NEW YORK CITY BAR ASSOCIATION
OCTOBER 20, 2022

OPENING PLENARY: WELCOME REMARKS

LEILA NADYA SADAT

Thank you to Christine Chinkin, Global Chair of the International Law Association, for opening our Conference and for these wonderful remarks. Thank you, as well, to Professor David P. Stewart, for your able stewardship of our organization over the many years that you have been its President and Chair.

It is now my great honor to open the 100th Annual Meeting of the American Branch of the International Law Association. Over the next two and a half days, more than 205 panelists will speak on 35 panels. The topics range from reforming the WTO for a sustainable future to cybercrime, the Vienna Convention in investor-state disputes, 100 years of international intellectual property law, prosecutions and accountability in Ukraine, the law of the rising sea, and the legitimacy and fundamental principles of international human rights law, just to name a few. Interspersed among these extraordinary panels will be several keynote speakers, including the individuals on this high-level Presidential Panel.

ILW 2022 could not have taken place without the support of all of our sponsors, to whom we are deeply grateful, and all of whom are listed in the program. We will be thanking them periodically during the weekend. Still, I would like to now give special thanks to Diamond Level Sponsors Debevoise & Plimpton, White & Case, Fordham University School of Law, and the Silicon Valley Community Foundations, as well as Platinum Level Sponsors and particularly the Leitner Center for International Law and Justice at Fordham Law School and Winston & Strawn LLP. We are a very small organization, and we are dedicated to keeping costs low and free for students. Without the generosity of our sponsors, International Law Weekend would not be possible.

It could also not have been planned and held without the hard work of our Organizing Committee, chaired by MJ Durkee, Imad Khan, and Floriane Lavaud, and comprised of Carolina Arlota, Pam Bookman, Amity Boye, LaWonda Love, Mae Nguyen, Lisa Reinsberg, Lucia Solano, Frédéric Sourgens, Milena Sterio, and Isabella Vasilogeorgi. David Stewart, Michael Scharf, and I serve *ex officio* as well. Finally, we also could not have put together this weekend without the extraordinary effort of Madaline George, our membership officer and ILW Administrative Officer, our student ambassadors, our media officer, Kristi Ueda, and of course, Fordham Law School and the *Fordham Journal of International Law*, our hosts.

In putting together the Weekend, the Organizing Committee has pulled together an extraordinarily broad range of individuals and perspectives. Some of the panels touch upon controversial subjects. We are proud that the International Law Weekend has always hosted individuals with a variety of views and that we are an organization that promotes dialogue and civil discourse. We do not censor our panelists, nor do we adopt or endorse their views as our own. Rather, we provide a space for

discussion and academic inquiry, and as far as I can discern, have done so proudly since ILW was begun in the 1970s.

For those unfamiliar with the Branch, it is dedicated to the study, clarification, and development of international law, as well as the advancement of peace, equity, and justice worldwide. It is a diverse and inclusive community of individuals working in or interested in international law. Also, it works closely with its sister organizations, including the American Society of International Law, the ABA Section on International Law, the International Law Students Association, and the IBA, among others. The Branch, which is part of the global ILA with 4,600 members and is headquartered in London, unites practitioners, academics, students, government officials, diplomats, and members of international and non-governmental organizations. Members collaborate on committees to produce reports, amicus briefs, and letters to Congress, federal agencies, the United Nations, and other international organizations on a range of current and emerging topics. This past year, many of us gathered for a global biennial meeting in Lisbon, Portugal; next summer, the ILA will celebrate its 150th birthday in Paris; and in summer 2024, the ILA Biennial will be held in Greece. If you are not already a member, please join!

This brings me to the subject of this panel, *The Next Century of International Law*. I can only imagine how difficult it must have been for the organizers in 1922, when the Branch was founded as an organization meant to promote international law, given the obdurate opposition of the United States to the League of Nations. Like many of us today, who teach, write about, or practice international law, many of them must have felt somewhat beleaguered. President Harding in his first address to Congress, declared that “in the existing League of Nations, world-governing with its superpowers, this Republic will have no part.” The League was treated as non-existent; its correspondence went unanswered until the League Secretariat devised a scheme to deliver correspondence to Switzerland, which would then, in turn, deliver it to the United States. President Harding and others referred to it as “dead.” Clarence Berdahl wrote in *The Michigan Law Review* in 1929 that the United States was “peeking through the keyholes in Europe.”²⁷ Subsequently, however, largely through the activism and support of Americans who believed in international law, including some of ABILA’s founders such as Elihu Root and William Taft, relations softened; a US national served as a judge on the Permanent Court of International Justice, and individual Americans, as well as the United States government interacted extensively with the League. ABILA’s founders were in that group and were clearly men (and a handful of women) ahead of their time.

By 1933, eleven years later, as rising nationalism and authoritarianism were gripping the world, individuals and governments were turning to the League for solutions, just as today we turn to the United Nations. Yet, as one author noted, “that the world is better off today for the League of Nations is obvious to my mind. But that the League of Nations is very badly off in a world disloyal to its Covenant and indifferent to its promises, strikes me as no less obvious.”²⁸

Following the second “Great War” of the Twentieth Century, the United Nations was established to replace the League. Crises have troubled the world since the end of that conflict: the cold war, conflict around the globe, the nuclear arms race, climate change, migration, and most recently a crippling global pandemic. We find ourselves once more in a climate of rising nationalism and authoritarianism, looking back to find answers as to how to move forward. And those who promote peace and dialogue,

²⁷ Clarence A. Berdahl, *United States and the League of Nations*, 27 MICH. L. REV. 607 (1929)

²⁸ William E. Rappard, *Nationalism and the League of Nations Today*, 27 AM. POL. SCI. REV. 721, 724 (1933)

who argue for settling disputes using law rather than force, find themselves once again back on their heels, struggling to argue for the effectiveness of international law as well as its legitimacy. Manley Hudson wrote in 1944 regarding the “international law of the future,” that to build that future:

“[P]atience will be required as well as courage. Continued and persistent effort will need to be backed by determined will. We cannot hope for much progress unless we are ready to make some departures, to subordinate some preoccupations, and to cultivate some new loyalties. . . and perhaps one generation can but lay the foundations upon which a later generation may build.”

Indeed, just as the great craftsmen and women of yesterday worked to build cathedrals that they would never see finished, we, the international lawyers of today, work to create a better future for our children, even if not for ourselves.

Here to help us envision the next 100 years of international law are four superbly qualified individuals, each with diverse experiences in international law and from different regions of the world.

Dr. Fatou Bensouda, former Chief Prosecutor of the International Criminal Court;

Mr. Miguel de Serpa Soares, Under-Secretary General for Legal Affairs of the United Nations;

Dr. Christopher Ward; ILA Vice-Chair and Barrister in 6 St. James Hall Chambers; and

Judge Ganna Yudkivska; formerly a member of the European Court of Human Rights.

They will each speak for a few minutes, giving their views on the achievements and challenges of international law and institutions from their perspectives, followed by a second round of exchange between the panelists and then questions from the floor.

INTERNATIONAL LAW WEEKEND 2022
WHITE & CASE LLP, NEW YORK CITY
OCTOBER 21, 2022

CENTENNIAL KEYNOTE ADDRESS: THE DEVELOPMENT OF
INTERNATIONAL LAW: LOOKING BACKWARD TO MOVE
FORWARD

JUDGE ABDULQAWI A. YUSUF

I take this opportunity to offer my warmest congratulations to ABILA for its one-hundredth anniversary, and to thank Prof. Leila Nadya Sadat, the President of ABILA, and the Board of ABILA, for inviting me to speak at this event. It is a pleasure to be here this evening to celebrate with you all ABILA's first century.

One hundred years is a very long time in the life of a human being, but it is a short time in the life and history of nations. However, contrary to the characterisation of 20th century as the “*short century*” by the British Historian Eric Hobsbawm,²⁹ it was actually a long one even for the nations of the world and their States.

If I were to describe the past one hundred years in a few words, I would borrow a quote from Charles Dickens: “*it was the best of times, it was the worst of times. It was the age of wisdom; it was the age of foolishness.*” Under the category of foolishness and of the worst of times, I would include the cruel and inhumane parts of our history such as the two world wars and the holocaust and other genocides, repressions and mass persecutions perpetrated during this period. Under the category of wisdom, I would include the ground-breaking developments in science and technology that radically changed our lives, but also for the international lawyers present here, the establishment of the League of Nations and the adoption of the Charter of the United Nations, the Statute of the International Court of Justice and the founding instruments of other international organizations.

I have taken my cue for the theme of my talk this evening from an African proverb which reminds us that “*in order to fathom the future, you have to look to the past.*” This does not mean that we should root our present in the past. It simply means that we have to understand the past so that we can better shape the present and the future. I therefore consider it very important that we should reflect on the last 100 years in order to assess better our present and prepare our future.

I will try to deliver my reflections in three snapshots and you will forgive me if I summarize certain things too much due to the constraints of time.

For the first snapshot, let me rewind to 1922, the year the ABILA was created. That was two years after the League of Nations was established. It was the year that the Permanent Court of International Justice, which was quite an innovation in international relations, had its first sitting in The Hague.

²⁹ E. J. HOBSBAWN, AGE OF EXTREMES: THE SHORT TWENTIETH CENTURY 1914-1991 (1994).

But, in terms of international law, what really marked that period was the Paris Conference of 1919. It was in Paris that the Covenant of the League of Nations was approved. It was also in Paris that the ideas that gave rise to the ILO were agreed upon. These were the progressive and forward-looking actions that came out of it. But, we have to look at the other side of the coin, and the actions or omissions which blocked the emergence of a new world order and an international law worth its name. It was indeed in Paris that Japan's proposal to include in the Covenant a clause on the equality of races was rejected by the major powers. This was a blatant rejection of the equal rights of peoples, a principle that later found its place in the Charter of the UN.

Those of you who are familiar with the history of Pan-Africanism will know that the second Pan-African Congress was held in Paris at the same time as the Paris Conference. The Pan-African Congress presented proposals to the major powers regarding the self-government of the African peoples who were under colonial oppression. Those proposals were totally ignored by the Conference, despite the thrilling rhetoric on self-rule in President Wilson's 14 points. Worse still, Ethiopia which was an independent State was not invited to join the League and had to overcome a lot of obstacles in its membership bid because it was considered not to meet the self-styled "standard of civilization" which served as the basis of the public law of Europe.

One can therefore say that despite some forward-looking steps, the international system fundamentally remained what it was at the end of World War I. A world in which the public law of Europe still prevailed, and the oppression and the colonisation of peoples was deemed not only permissible, but desirable. A world in which resort to war as a policy tool was considered legitimate. A world in which nations were still treated as unequal and where there was a hierarchy of sovereignty whereby some States, such as Ethiopia, were considered even less sovereign than the British dominions at the time, such as Australia, Canada, and New Zealand.

This was the world in which ABILA was born, reflecting an aspiration for a better world and driven by a strong desire to introduce a rule of law in international relations and lay the basis for a universal international law that transcends the obsolete standards of European public law.

Unfortunately, it will take more than twenty years and another world war for the realization of these aspirations through the enactment of the Charter of the United Nations in 1945.

This brings me to the second snapshot of my speech and what Eric Hobsbawm described as the "golden era" of the century. For him, these years were 1950 to 1975, but I would extend them to the 1990s. I don't think that we can contradict him on his labelling of the period as a "golden era" because it was indeed an era of liberation and emancipation of peoples, the era of the emergence of more than 100 States on the international plane, an era of economic development and growth for many nations and an era of the universalisation of international law. It was also an era in which the threat of world wars receded and the number of people killed in inter-State armed conflicts was substantially reduced. During this period, international law developed into a corpus of norms which found application not only among all nations, but also increasingly in the daily lives of people all over the world. It was also a period in which the rule of law took hold for the first time at the international level, and the judicial settlement of disputes finally found its rightful place in the international arena.

We must ask ourselves what rendered this era possible from a legal point of view. I will not, of course, talk about economic and social factors that may have contributed to it, although they are very

important. In terms of the legal factors that contributed to this state of affairs, I would single out three principles and provisions contained in the Charter of the UN, which I would call a trinity of principles. For me, this trinity is at the basis of the rule of law at the international level; together, I would say, with the creation of the International Court of Justice as a principal organ of the United Nations, rather than a separate court affiliated to the organisation as was the case with the PCIJ and the League of Nations. I add the Court, not because I am a member, but because without a court of law, there can be no rule of law.

This trinity of principles consists of the following. First, the reaffirmation of faith by the peoples of the United Nations in fundamental human rights, in the dignity and worth of the human person and the equal rights of man and woman and of nations large and small. Secondly, the affirmation in the Charter of the principle of equal rights and self-determination of peoples. Thirdly, the prohibition by the Charter of the use of force against the territorial integrity or political independence of any State.

Since I am from Africa, I will begin with the impact of the principle of equal rights and self-determination of peoples. On a very personal note, I do not think that you would have had a Somali judge of the ICJ standing before you today if it were not for decolonization under the impetus of the principles of the UN Charter. We all know the role that the principle of equal rights and self-determination of peoples has played in the process of decolonization and in the elaboration of the UNGA resolution 1514 (1960)³⁰ which confirmed the customary law status of the right of peoples to self-determination.

The second component of the trinity of principles on the re-affirmation of fundamental human rights and the dignity and worth of the human person found concrete expression and further elaboration through the Universal Declaration of Human Rights in 1948 and the two Covenants adopted by the United Nations in the 1960s. The recognition of the human rights of all human beings was a revolutionary idea which had a unifying effect for all humanity because for the first time all members of the United Nations pledged to respect the human rights of all, not because of their race, nationality, sex or gender but because of their inherent humanity. This created a shared value on the basis of which all States could work toward the realisation of the noble idea of protecting the dignity of all human beings.

The third pillar of this trinity without which the first two pillars cannot be realised is the prohibition of the use of force and the outlawing of the concept of “might is right”. This is not to say that we live in some sort of a utopia where the world has completely done away with the use of force. However, despite its shortcomings or occasional failures, we cannot but acknowledge that the prohibition of the use of force has greatly benefited humanity and has obliged even those who violate it to try to justify themselves on the basis of the law. This is by itself a significant achievement.

Through this trinity, we have to recognize that the creation of the United Nations and the consecration of the principles of the Charter have given rise to a period in the history of humanity which is unprecedented in terms of the avoidance of disastrous world wars and in terms of the protection of human dignity. And one could also argue that it has equally contributed to the economic development of almost all nations and a better and more effective cooperation among them.

³⁰ Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) UNGA Resolution 1514.

This brings me to the third and last snapshot which relates to the present and future. Is the state of affairs which I have just described under threat today? What are some of the major challenges we are facing and that will have to be met in the future? How do we move forward, instead of moving backward?

Today, we find ourselves in a very complex world in which the values and principles of the United Nations Charter appear to be relegated to the background instead of inspiring and informing the conduct of States in their daily international interactions. At the same time, we are faced with threats to humanity in general, arising from pandemics, climate change, and the erosion of biological diversity.

We live in a world in which the State is no longer the only or the most prominent actor at the international level, but other actors, such as transnational corporations, are playing a role that is sometimes more important and more influential than that of States. Indeed, a world in which human rights and the dignity of the human being is to be defended and upheld not only against the State, but also against corporations, some of which now extract value from the behaviour of human beings and trade in information gathered from all the users of their social media products.

We live in a world where the multilateralism that characterized the system of international relations after the Second World War is being increasingly challenged. We often see a growing tension between international law and sovereigntist and so-called “populist” political doctrines that have recently emerged in many parts of the world. These doctrines see multilateralism and international law as being in contradiction with State sovereignty.

The heart of the sovereigntist argument in many countries is that the expansion of international law places increasing restrictions on the state’s freedom of action in a range of fields, including human rights. It should, however, be recalled that the right of entering into international engagements is an attribute of State sovereignty. Moreover, the sovereignty of a State is a sovereignty under, and not above, the international rule of law. All States have to conduct themselves in their relations with each other within a legal framework, which is of course, that of international law.

Pope Francis, in his new book,³¹ which came out in Italy only a couple of days ago, calls for the reform of the UN system. This is the first time I have ever heard a pope calling publicly for the reform of the UN. It means that the situation is not only serious, but that it requires urgent action. The Pope says, and I quote, “the necessity of these reforms became more than obvious after the pandemic when the current multilateral system showed all its limits.” I fully agree with him. I think that as regards the emerging threats to humanity in general, such as pandemics and climate change, we need to go beyond the traditional multilateral cooperation among States and engage in cooperation based on human solidarity which addresses the needs of humanity in general in a context in which we are all on the same boat. Thus, in addition to the trinity of principles that I mentioned before, the challenges of today require collective solidarity to take centre stage. To this end, we will need a normative framework which reflects the common interests of humanity and aims at the accomplishment of those higher purposes indispensable for the survival of humanity on this planet and not, the reaffirmation of inter-State reciprocal advantages.

³¹ POPE FRANCIS, A GIFT OF JOY AND HOPE (2022).

Secondly, we need to associate in such a framework, not only States, but non-State actors, such as corporations and civil society organizations, that can effectively contribute to the realization of such solidarity. Thus, we need to move beyond an international law designed to deal with inter-State relations based on reciprocity to a law of humanity which can safeguard its common interests.

To conclude, let me say that unless humanity uses its shared values to enact norms and principles that can meet these new challenges, it might not be able to overcome the looming planetary threats facing us all today. We have to put over and above the sovereignty of States the urgency of addressing common threats and challenges facing humanity. As long as States continue to work separately, each minding its own national interests in confronting pandemics, erosion of biodiversity, sea level rise and climate change, the challenges facing humanity and the development of a normative framework which can inform and inspire its collective action will not be facilitated. We all have a role to play in advancing such a new vision for international law, but the role of associations like ABILA is of paramount importance. I am quite confident that ABILA will adjust its actions to the challenges facing us in the next one hundred years. Thus, while congratulating ABILA for the first 100 years of its existence in which it made significant contributions to international law, I take this opportunity to call on it to strive for an international law capable of addressing the needs of humanity in the next 100 years.

INTERNATIONAL LAW WEEKEND 2022
FORDHAM UNIVERSITY SCHOOL OF LAW
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KEYNOTE ADDRESS: COVID AND GLOBAL CRITICAL RACE
FEMINISM

ADRIEN WING

The title for my talk today is COVID and Global Critical Race Feminism. It is based on a chapter that's going to be in a book called 'Race, Racism and International Law.'³² This book is going to be published by Stanford University Press. The four editors are Chantal Thomas, Justin Desautels-Stein, Kimberlé Williams Crenshaw, and Devon W. Carbado. I'm glad to introduce you to this work. I have to dedicate this talk to my extended family, because I've had over 90 members of my extended family infected by COVID. Seven of them died before the vaccine. So COVID isn't just a theory. COVID isn't even just, 'oh, do I have enough of my booster shot so I could get into the Fordham campus?' It's affecting my whole family in ways we can't even begin to consider today. What I'm going to do is give you a tiny bit of background on COVID, since you're very familiar with it. And then I want to get into this weird thing that most of you have never heard of, called Global Critical Race Feminism, which is a focus on women of color around the world. I'm going to use a Global Critical Race Feminist approach to investigate how we could improve the human rights of women of color in various countries and assist them in transcending the situation brought by COVID in both the short term and the long term.

I will start with a quote. "Women are the real heroes of this crisis, even if they are not recognized as such."³³ But curiously, there seems to be a lack of awareness that women are actually shouldering the response to this crisis, even if they're saving lives, they remain unsung heroes, and this quote is from the executive director of UN Women. As we know, the COVID pandemic has affected millions of lives. As of June, they estimate over 500 million people have had it, which caused 6.3 million deaths. As we know, it affects us, whether we are here in New York or whether we are in any country and every society; women have faced a disproportionate burden on the front lines and the back lines concerning handling family matters, education, health care, employment and dealing with domestic violence. Our global understanding of the science behind the Coronavirus has grown over time, and we've become used to trying to deal with the different variants, vaccines, boosters, etc. But we don't know what the statistics really are.

The whole thing is so politicized. It's also now intersected with notions of manhood - if you don't or do wear a mask. It has affected different countries and regions, as well as various groups of people within each country, differently. However, wherever it is, it has disproportionately impacted those who are most disenfranchised within their society. We don't know the long-term effects on my two daughters-in-law, the one who just had a baby and another one who's having a baby around November

³² DEVON W. CARBADO ET AL., RACE, RACISM, AND INTERNATIONAL LAW (2025).

³³ Laetitia Kaci, "Women are the unsung heroes of this crisis," UNESCO (Jun. 16, 2020)

<https://www.unesco.org/en/articles/women-are-unsung-heroes-crisis> (last visited May 6, 2025).

5; both of them got COVID while pregnant. We had no idea, right, what the long-term effects would be on those babies. COVID has only been around for a couple of years. The baby on Tuesday looks fine. Different scans showed fine, but who knows how will the baby be at two years, four years, it's a DNA change. We don't know any of that, but whatever it's going to be, it will certainly affect women, whether they be mothers or in other roles.

Now, Global Critical Race feminism. Where the heck did I come up with that term? As you heard from Professor Sadat, I'm the editor of an anthology called *Critical Race Feminism*³⁴ and another anthology called *Global Critical Race Feminism*.³⁵ These are both from NYU Press. They're out of date. I haven't had time to go back and do a third edition of *Critical Race Feminism* or a second edition of the *Global*. Just briefly, what these terms mean: *Global Critical Race Feminism* comes from critical legal studies. Hopefully, most of you may have vaguely heard of that, but that's a progressive perspective that elite white men in the 70s took on law and were deconstructing how we usually teach law school and critiquing the law from a left-of-center approach. This approach was quite appealing to a number of people entering the academy as professors from different backgrounds. Still, as people of color began to enter the Academy, they're like, 'Well, this critical legal studies thing. Maybe it has something to it, but it doesn't deal with race.' Because the people in it were like, 'Well, class deals with race.' Class is the major thing, but not when you're a person of color. It may not be the most major thing. So critical race theory develops, and therefore, you get the race part of the *Global Critical Race Feminism* evolves when people like Professor Richard Delgado³⁶ and Derrick Bell,³⁷ and others start placing an emphasis where race is at the center rather than as a sideline. Okay, then you begin to get in the later 80s, people like myself, who are women of color, who are becoming professors, young professors, and we're like, 'the critical legal studies thing, maybe that's got something going on with it, the critical race thing. Yeah, that's important.'

The feminists, mainly white feminists, forgot women of color could have specificities that it was necessary to address. So, women of color - some of us - began to write specifically about women of color, and not just in a footnote. In other words, *Critical Race Feminism* develops, and it's pulling from all of these different networks that I've mentioned. Also, we started pulling from something called womanism, and that is a focus on women of color, by people who are not lawyers, people who are in literature, like Alice Walker³⁸ and others. And they call that womanism. Why is it called womanism? Why not feminism? Because for many people, feminism is an F word. It's not a good word. And so, for many women of color, feminism means white, middle, or upper-class women complaining about something, and usually, what they're complaining about relies on women of color to help make their lives work. That's why you'll get some people who won't use the word feminism. They'd rather use some other word.

Anyway, this *Critical Race Feminism* starts developing. The most famous part of it is known by Professor Kimberly Crenshaw, who's on the Columbia and the UCLA faculty, and she starts using the term intersectionality, which she brought into law, but it's in many, many disciplines now. She starts

³⁴ ADRIEN KATHERINE WING, *CRITICAL RACE FEMINISM – A READER* (Adrien Katherine Wing ed., 2003).

³⁵ ADRIEN KATHERINE WING, *GLOBAL CRITICAL RACE FEMINISM – A READER* (Adrien Katherine Wing ed., 2000).

³⁶ RICHARD DELGADO AND JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2017).

³⁷ Jelani Cobb, *The Man Behind Critical Race Theory*, *The New Yorker* (Sept. 13, 2021)

<https://www.newyorker.com/magazine/2021/09/20/the-man-behind-critical-race-theory> (last visited May 6, 2025).

³⁸ Stephanie Younger, *What Alice Walker's Definition of Womanism Taught Me in 2020*, *Black Feminist Collective* (Nov. 14, 2020) <https://blackfeministcollective.com/2020/11/14/alice-walker-womanist-movement> (last visited May 6, 2025).

talking about that intersection of race and gender, and then it goes further than there. She wrote a very famous article on de-marginalizing women of color.³⁹ She said that we need to take women of color out of the margins, the footnotes, and put them at the center when we're writing because otherwise, they'll be lost. Nobody will know that they exist.

Critical Race Feminism becomes a race critique within feminist discourse and a feminist critique within critical race theory. Besides the term intersectionality, there are several other terms I won't have time to go into them in-depth, but critical race feminists are what we call anti-essentialists. We don't believe all the women are like this, or all the blacks or all the gays. We don't believe you should essentialize any group of people. You have to look at the richness that they may bring. We use another term called 'multiple consciousness.'⁴⁰ Every day I'm a Black Woman, so today, don't say, 'be black today, but be a woman tomorrow.' No, I have to be a Black Woman every day.

We're also very interested in praxis: the intersection of theory and practice. In other words, historically, you became a professor; you were supposed to stay in this ivory tower and write these law review articles that 50 people read. Oh, no, you're a bestseller. I have a best-selling book. 4000 people bought my book. That's a bestseller. No. Praxis is that I need to help a lot more people. I need to have outreach to more people than just the Academy. So that's praxis. We're concerned with praxis. Many of us come from communities. My father was from Harlem, and my mother was from the South Bronx. I couldn't just stay in an ivory tower in Iowa or anywhere else and just be like, 'oh yeah. This is fine.' We definitely believe in praxis.

Another term that I have developed is called 'spirit injury.' Spirit injury is the psychological effect of any ism on you to be an individual, somebody in your family saying, 'You're so dumb, you're so fat. Why can't you be like your brother?' Or it can be against whole groups of people, like right now, they're trying to ban the teaching of race in a whole bunch of states. So that's like saying to all the people of color, you don't count your experiences. Don't count because we're worried that somebody's thinking their six-year-old will get exposed to reality. So that's a spirit injury. And so, spirit injuries are part of what's affecting people from COVID as well.

And finally, a term I'll throw out there for you. On the Hawaii faculty, Professor Mari Matsuda has a term: looking to the bottom.⁴¹ Even though we're elite as professors, we are all elite. We may not be big firm partners, but we are more elite than most women in the world, most women of color in the world, and that's our reality. When we're writing about women of color, we have to look to those at the bottom, who are cleaning this building, who are babysitting and changing those diapers. Let's look at their reality and not 'Oh, did I get upgraded on United to come here first class? Oh, I didn't. I'm upset.' That's a very trivial, minor problem, versus people who can't even imagine having the resources to get on an airplane.

I have written about intersectionality on the domestic and the international level. I was one of the people blessed to help work with the drafters of the South African Constitution. To work with the

³⁹ Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43(6) STAN. L. REV. 1241 (1999).

⁴⁰ *Multiple Consciousness, Multiple Jeopardy: The Ideology of Black Feminism*, Black Feminisms (2021) <https://blackfeminisms.com/multiple-jeopardy> (last visited May 6, 2025).

⁴¹ Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. CIV. RIGHTS L. REV. 323 (1987).

founding mothers and fathers of a constitution was something I couldn't have imagined. I was also blessed to work on the Rwandan constitution after the genocide and the Palestinian Basic Law from the Oslo period.

The South African Constitution talks about intersectionality, has 17 identities, and you can have discrimination on an intersectional basis. Under US law, you have to be, like, 'Okay, today, under Title Seven, I'm just a woman. Tomorrow, I'm just a black.' Most of the courts can't conceptualize this, but there are black women. South Africa learned from our example, and they recognize intersectionality. And so here are the identities, race, gender, sex, pregnancy, marital status, ethnic or social origin, color, sexual orientation, age, disability, religion, consciousness, belief, culture, language, and birth. Imagine an equality clause. We can't even get an equality clause with sex or gender in it. Imagine having all those identities and looking at them on an intersectional basis.

I've also written about class. They don't mention class and something I call stature identity.⁴² Stature identity means you do better if you look like what is considered beautiful in your culture. You do better in school. You do better in jobs, who you marry, etc. And every culture could be different, but stature identity has a big impact on people we may or may not even write about. Now, on to the global. We have women of color who are now writing in areas as broad as multiculturalism, immigration law, female genital surgeries, female infanticide, HIV AIDS, economic development, conflicts between customs and Western constitutional norms, tensions between communitarianism and individualism; things like 9/11 brought to the forefront the intersection of nationality, religion, language. Culture and political ideology, we contribute to the development of international and comparative law, global feminism, post-colonial theory, and Third World Approaches to International Law, which is known as TWAAIL. We're all doing this by de-marginalizing women of color on a theoretical and a praxis basis; women of color can be simultaneously dominated within the context of imperialism, neocolonialism, or occupation, as well as local patriarchy, culture, and customs.

Now, with all that background, we're focused on the COVID part. When you look at the data from the US, there have been numbers of articles that, unfortunately, tell us Blacks, Latinos, and Native people have been disproportionately affected in terms of contraction of the disease, hospitalization, death, etc. Now, when you look globally - I researched Africa, Latin America, and Asia - to see what was happening in those continents. And as you might expect, women in those countries are disproportionately harder hit economically. You can see female children being forced into marriage and early pregnancies.⁴³ Women are heavily involved in every agricultural sector that has been affected. Disruptions to the supply chain, right, are putting the whole global food economy into disarray, which will also disproportionately affect women, hunger and malnutrition, contributing to high infant, child and maternal mortality. There's a shadow pandemic regarding domestic violence.⁴⁴ It appears the rates of domestic violence, which are always underreported, are more than we would think. When people were trapped in their houses, frustrated, losing jobs, etc., these rates went up, and we'll never really know how bad those rates were. Also, rising rates of women and girls subjected to sexual abuse. Now, to get even more precise, I hope that in the years to come, there will be people who write articles

⁴² Adrien Katherine Wing, *Global Critical Race Feminism Post 9-11: Afghanistan*, 10 WASH. U. J. L. & POL'Y 19 (2002).

⁴³ *Refugee Girls Report 'Torture' of Early Pregnancy Due to COVID School Closures*, War Child (Nov. 25, 2021), <https://www.warchild.net/news/early-pregnancy-due-to-covid-school-closures> (last visited May 6, 2025).

⁴⁴ *The Shadow Pandemic: Violence against women during COVID-19*, UN Women, <https://www.unwomen.org/en/news/in-focus/in-focus-gender-equality-in-covid-19-response/violence-against-women-during-covid-19> (last visited May 6, 2025).

about what is happening in specific countries and look at the class, religion, and minority status of women.

Where's the international law in all this? Right? What I would say is what we have to do is look intersectionally at international law. Solutions have to be intersectional. I looked at seven treaties and one commission. If we were in a classroom and I had time, I'd take volunteers, call on students and say, 'Okay, what treaties do you think might be involved, right?' And actually, I'll do that just for everyone in here. Let's have a volunteer give me a treaty where you think it might be particularly helpful to help women of color affected by COVID?

Audience: The UNCRC and ICESCR.

That's a good start! Even the ICCPR! They've done research restrictions on seven categories in ICCPR, in other words, restrictions on speech, restrictions on assembly, including the right to access public spaces, intrusions on privacy modification or delays in electoral processes, denials of justice and fair trial, the right to life, restrictions on religious practices and gender-based violence that can be affected with the right to life and restrictions on freedom of movement, all of that's coming out of ICCPR, You've already mentioned ICESCR. Under ICESCR, you have things like health care - with health care, you have the right to food, work, and participate in cultural life. Third, as I'm saying, lots of things are discriminating on the basis of race or ethnicity, whether you're talking about civil and political rights or economic, social, and cultural rights.

Logically, all the rights under CEDAW can be invoked. As some of you may know, CEDAW does not specifically use the term domestic violence, but recommendations from the CEDAW Committee make it clear that the convention should apply to domestic violence right to the child - anybody under 18 years old. I've mentioned that more girls are dropping out of school than boys.⁴⁵ That can happen generally and certainly that happens during the pandemic. Nobody mentioned the Convention on Rights of the Persons with Disabilities, that one is another one, and the treaty itself says state parties recognize women and girls with disabilities are subject to multiple discrimination. There's another thing I wasn't familiar with: the International Health Regulations. Their purpose is to prevent, protect against, control, and provide a public health response to the international spread of disease in ways commensurate with and restricted to public health risks and which avoid unnecessary interference with international traffic.

So then, besides some of these treaties, and I'm sure there's more, you could also look at some things that have come out of the Inter-American Commission on Human Rights, and they've put out some resolutions specifically regarding the pandemic and human rights in the Americas, and COVID vaccines and Inter-American Human Rights now, here are some radical ideas: even though all of us in this room have dedicated our careers to international law, it's not going to be international law that can directly address all of these problems. Right? How many people have the money to say, 'Oh, I'm going to raise my issue with the European Court, the African Court, or the Inter-American Court.' People don't have that money. It's not there. So, in most cases, people will have to deal with their domestic legal system, which is often dysfunctional and especially dysfunctional for certain groups of people. Nevertheless, most of the solutions to help women of color who are having problems based

⁴⁵ Girls' Education Challenge, *Emerging Findings: The impact of COVID-19 on girls and the Girls' Education Challenge response*, Girls' Education Challenge (2021).

with COVID are going to be domestic. I can write a nice chapter, but it's probably not going to be under international law that we will get all these solutions.

I'm reminded that men designed these systems many years ago, and they are primarily the ones who are still around and have to enforce them. And isn't it ironic that many things are not necessarily going to work well to try to help this segment, or any segment, of women and people of color? And I'm reminded of a phrase by the late Audre Lorde. She was a black lesbian feminist, and she has a famous phrase: "*The master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change.*"⁴⁶ If the master's tools are international law and we're trying to use them in the house, that's part of the reason it may be difficult, but then what is it that we are to do? Do we tinker inside the house? As people of color like, let us not be in the basement. Let us have an air-conditioned room with Wi-Fi, and let us have that space. So, are we wanting to tinker in the house, or do we want to blow it up? Some people want to blow up the house, but that would replace it with chaos, right? We don't want chaos. Maybe some people do want chaos.

So, coming to some thoughts about conclusions. Graça Machel. Machel is the widow of Nelson Mandela. She herself had been the first lady of Mozambique when her husband was assassinated, and she's now part of the Council of Elders.⁴⁷ And she says we have been presented the opportunity to reimagine and redesign our society into a vibrant and equitable one. We must place women and women's leadership at the core of our response and beyond. The Elders have also said the allocation of response resources should be targeted toward the immediate needs of managing the virus, as well as future-looking, to simultaneously dismantle the structural, systemic barriers that reinforce inequality and disenfranchisement. Women have to be assisted in all areas they operate in, which is everything. You have farming sectors, you have employment, you have barriers to inheritance in certain countries where women either can't get land at all, or they can only have fractional shares of land, and so they can't own things that can help them gain wealth. We have to look at the digital economy and make sure we're incorporating everyone into it, including women. Online learning can help us. It's not ideal. I love having you in this room, but it has taught us there's a lot that can be done when you're not going to have people there.

Healthcare systems must be strengthened by including more women of color in roles like doctors and heads of hospitals. Of course, they make up the bulk of the nursing and other support staff. Dignity is important. The South African constitution has a clause about dignity. Americans can't even conceive - what are you talking about? Dignity? It's not something you can concretize. Well, in South Africa, they have concretized it. Their clause says everyone has inherent dignity and the right to their dignity to be respected and protected. Wow. Can you imagine something like that with the United States?

We must also address the spirit injuries so that these injuries don't kill us all, literally or figuratively. There's been a failure to learn from the prior pandemics, so women of color must be part of designing international, national and local, legal and nonlegal solutions. We are in different difficult times. Globally, my students, my children, and my grandchildren are going to have less reproductive freedom than I had over the last 40 years. We are dealing with a situation that many of our allies, and I just came from Luxembourg, query whether the United States democracy will survive. Maybe all of you are certain it will survive, but we don't know what will happen in 2022, especially the 2024 election. We're in very scary times. I dream of a world where my rainbow group of 19 grandchildren who are

⁴⁶ AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* (1984).

⁴⁷ *Graça Machel*, The Elders, <https://theelders.org/profile/graca-machel> (last visited May 6, 2025).

Muslim, who are Christian, who are Jewish, and who are atheists, also the mixtures include African American, Mexican, Ethiopian, and Caucasian. I have a rainbow of people in my family, and I dream they would be able to go and they would be able to meet people and play with other kids safely, whether that be Harlem or the South Bronx, Soweto, the Ukraine, or Jerusalem... that they could meet Uyghurs, they could meet Rohingya, they could be in Moscow, and they could be in Marrakesh, and that they could be with Iowans, and they could be with the Western Saharawi.

I dream of that world, and I don't know if I will live to see it, but I can dream for that, and we can all dream for that. You, young people, I have a poem that I say, and I'm going to close with this poem. The late Maya Angelou wrote this poem; some of you may know it, and some may have never heard it. It's called Still I Rise.⁴⁸

*You may write me down in history
With your bitter, twisted lies,
You may trod me in the very dirt
But still, like trust, I'll rise.*

*Does my sassiness upset you?
Why are you beset with gloom?
'Cause I walk like I've got oil wells
Pumping in my living room.*

*Just like moons and suns,
With the certainty of tides,
Just like hopes springing high,
Still I'll rise.*

*Did you want to see me broken?
Bowed head and lowered eyes?
Shoulders falling down like teardrops,
Weakened by my soulful cries?*

*Does my haughtiness offend you?
Don't you take it awful hard
'Cause I laugh like I've got gold mines
Diggin' in my own backyard.*

*You may shoot me with your words,
You may cut me with your eyes,
You may kill me with your hatefulness,
But still, like air, I'll rise.*

*Does my sexiness upset you?
Does it come as a surprise
That I dance like I've got diamonds*

⁴⁸ MAYA ANGELOU, AND STILL I RISE 44 (1978).

At the meeting of my thighs?

Of the butts of history's shame

I rise

Up from a past that's rooted in pain

I rise

I'm a black ocean, leaping and wide,

Welling and swelling I bear in the tide.

Leaving behind nights of terror and fear

I rise

Into a daybreak that's wondrously clear

I rise

Bringing the gifts that my ancestors gave,

I am the dream and the hope of the slave.

I rise

I rise

I rise.

Thank you so much, dear friends.

International Law Weekend 2023

International Law Weekend 2023 was held at the New York City Bar Association at 42 West 44th Street, New York City, on October 19, 2023, and Fordham University School of Law on October 20 to 21, 2023. The theme of the Weekend was “Beyond International Law.” The American Branch of the International Law Association organized the Weekend. It featured thirty-four panels that asked: How does international law interface with other disciplines seeking to promote peace and equality, such as domestic law, diplomacy, trade, social change movements, and global solidarity initiatives? How can international law adapt to respond more effectively to the world’s shifting crises?

The Presidential Opening Plenary was held on Thursday evening, October 19, 2023, and was titled “President’s High Level Opening Plenary: Beyond International Law.” Presidential Opening Plenary speakers were Ambassador Sheikha Alya Ahmed Saif Al Thani (Permanent Representative of the State of Qatar to the United Nations), Maxine Burkett (Assistant Director for Climate, Ocean, and Equity, White House Office of Science and Technology Policy), Judge Gatti Santana (President, International Residual Mechanism for Criminal Tribunals), Gregory Shaffer (Scott K. Ginsburg Professor of International Law, Georgetown University Law Center; President, American Society of International Law), and Christopher Ward SC (Immediate Past President, International Law Association). Michael P. Scharf chaired this panel.

On Friday, October 20, 2023, Gregory Shaffer (Scott K. Ginsburg Professor of International Law, Georgetown University Law Center; President, American Society of International Law) gave the lunch keynote. He was introduced by Milena Sterio (Charles R. Emrick Jr.-Calfree Halter & Griswold Professor of Law, CSU College of Law) and Matthew Diller (Dean and Paul Fuller Professor of Law, Fordham University School of Law) gave welcome remarks.

On Friday, October 20, 2023, the panels were:

- Outer Space & Earth Interactions within Environmental Governance & Accountability Regimes (chaired by Matthew Schaefer)
- Is the International Legal Order Unraveling? (chaired by David L. Sloss)
- Investment Law and Energy in Times of Armed Conflict (chaired by Guillermo J. Garcia Sanchez)
- The Changing Face of Global Content Moderation (co-chaired by Michael Pizzi and Ashika Singh)
- ABILA-ASIL Roundtable on Cooperation & Compliance Through International Law & Institutions (chaired by Emma Lindsay)
- Leveraging International Law to Fight Climate Change: Limitations & Opportunities (chaired by Jovana Crnčević)
- Crimes Against Humanity: New Offenses, New Frontiers? (chaired by Leila Nadya Sadat)
- Russia & Ukraine: A Springboard or a Setback for International Accountability? (chaired by Gabor Rona)
- Negotiating a Torture-Free Trade Treaty (chaired by Aaron Fellmeth)
- Pushback: The Increasing Opposition to the Domestic Relevance of International Law (chaired by Martin S. Flaherty)
- Beyond The High Seas Treaty: Addressing Gaps in Ocean Governance (chaired by Rhianna Hoover)

- Top Ten Developments in Private International Law (chaired by Michael Coffee)
- Prosecuting War Crimes in U.S. Courts: New Avenues for Legal Accountability in Ukraine & Beyond (chaired by Catherine Powell)
- Reimagining International Refugee Law: Meaningful Participation of Refugees in the Laws that Affect Us (chaired by Rez Gardi)
- The Global South and the Shaping of International Law: Challenges, Opportunities & Lessons Learned (chaired by Daniel Stewart)
- The Role of International Courts in Promoting State Responsibility for Climate Change (chaired by Enéas Xavier)
- Rethinking Solutions to International Disputes? (chaired by Eirik Bjorge)
- Why the Slave Trades of the Past, Present and Future Call for Rome Statute Rectification (chaired by Alexandra Lily Kather)
- Empowering the UN Security Council to Address Modern Threats to Peace and Security (chaired by Floriane Lavaud)
- China Beyond its Global Borders & Global Governance (chaired by Elisabeth Wickeri)

On Friday evening, October 20, 2023, the Permanent Mission of France to the United Nations hosted a reception at 245 E 47th St, 44th Floor, New York.

Saturday, October 21, 2023, opened with a Member's Meeting and the ABILA Annual Award Presentations. Christopher Ward SC (Immediate Past President, International Law Association) gave welcome remarks. Ved Nanda (University of Denver) and John E. Noyes (California Western School of Law) received the Charles Siegal Distinguished Service Award. The ABILA Outstanding Achievement Award went to Navi Pillay. The ABILA Book of the Year Award went to Frédéric Sourgens for *Good Faith in Transnational Law: A Pluralist Account*; the ABILA Award for a Book on a Practical or Technical Subject went to Margaret E. McGuinness and David P. Stewart for *Research Handbook on Law and Diplomacy*; the ABILA Book Award for a First-time Author went to Marcela Prieto Rudolph for *The Morality of the Laws of War: War, Law, and Murder*; and the ABILA Best Edited Volume Award went to Jeffrey L. Dunoff & Mark A. Pollack for *International Legal Theory: Foundations and Frontiers*.

On Saturday, October 21, 2023, the panels were:

- Assessing the Legal Personality & Obligations of International Courts (chaired by Lisa Reinsberg)
- Geopolitics and the Emerging Investment Regime (chaired by Amy Porges)
- The ICC's Gender Persecution Policy: Definitions; Implementation; Way Forward (chaired by Milena Sterio)
- Trade, Labor Rights and Forced Labor – Recent Trends in International Trade Law (chaired by Aristeo Lopez)
- Global AI Regulation: The (Mis)Alignment Challenge (chaired by Thomas Streinz)
- The Advisory Function of the International Tribunal for the Law of the Sea in a Time of Climate Crisis (chaired by Romain Zamour)
- Economic Sanctions and International Immunity: Current Developments (chaired by David P. Stewart)

- The Practice of the UN Human Rights Treaty Bodies: Beyond International Law? (chaired by Felix Kirchmeier)
- Beyond Multilateral Intellectual Property Law (chaired by Peter Yu)
- Can International Law Give a Boost to the Energy Transition? Challenges and Possibilities (chaired by Myanna Dellinger)
- Customary International Law and Beyond: What Is Its Unique Role in Facilitating Global Cooperation? (chaired by Brian Leppard)
- Border Governance in an Interdependent World (chaired by Mortimer Sellers)
- Digital Authoritarianism: Compounding Impunity for Human Rights Violations (chaired by Christel Y. Tham)
- The UN International Law Commission and the Future of International Law-Making (chaired by Vladyslav Lanovoy)
- Emerging Voices (chaired by Emily Behzadi)

The American Branch extends its gratitude to the 2023 ILW Program Committee, composed of: William Aceves (Co-Chair, California Western School of Law), Floriane Lavaud (Co-Chair, Debevoise & Plimpton LLP), Milena Sterio (Co-Chair, Cleveland Marshall College of Law), Carolina Arlota (Columbia Law School), David Attanasio (Dechert LLP), Emily Behzadi (California Western School of Law), Amity Boye (White & Case LLP), Jovana Crnčević (Withersworldwide), Yvonne Dutton (Indiana University Robert H. McKinney School of Law), Martin Flaherty (Fordham University School of Law), Rachel López (Drexel University Thomas R. Kline School of Law), Yaw Otu Mankata Nyampong (International Civil Aviation Organization), Lisa Reinsberg (International Justice Resource Center), Jennifer Trahan (NYU Center for Global Affairs), Federico Wynter (Debevoise & Plimpton LLP), and Alyssa Yamamoto (UN Counterterrorism and Human Rights).

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INTERNATIONAL LAW WEEKEND 2023
FORDHAM UNIVERSITY SCHOOL OF LAW
OCTOBER 20, 2023

KEYNOTE ADDRESS: BEYOND INTERNATIONAL LAW? A
DANGEROUS TIME

BY GREGORY SHAFFER

The title of this year's conference *Beyond International Law* is controversial. One can view it as depressing for those committed—to cite the mission of the American Society of International Law—to promoting “the establishment and maintenance of international relations on the basis of law and justice.” One can also see it as a dangerous title in its implications for our future, as well as the violence, turmoil, and chaos besetting the world today in Israel, in Gaza, in Ukraine, and elsewhere.

This is a horrible time. There is trauma from the brutal attacks, deaths, and horror in southern Israel. There is ongoing horror, violence, and deaths of civilians in Gaza, including the most vulnerable—the sick, the elderly, and young children. There is immense suffering of those close to us, and those we do not know but are part of our human family. There is immeasurable grief that is heartbreaking and touches us all, wherever we may stand. I wish to start by acknowledging this trauma and asking you to join me in having a moment of silence in recognition.

I prepared this talk before the attacks and the war and their hemorrhaging broke out. There is no easy segue to this talk. But to carry on, to engage in working for a better world, we must.

I see the title of this conference as a call for us to take stock of where we are and imagine, propose, and implement ways—and I stress the uncertainties in the plural form of *ways*—forward. I will do so in this talk with a conceptual framework and examples of common challenges, often existential ones, beyond the current war, while I encourage us to think creatively across the challenges that this small, complex world and we, among its inhabitants, face.

As Groucho Marx apocryphally is quoted, “I’m not crazy about reality, but it’s still the only place to get a decent meal.” As one who works within the legal realist, sociolegal, pragmatist tradition of law, we need to start with reality. In a moment, I will sketch out those traditions and their relevance today in terms of where we might go from here. But within those traditions, I stress, although the understanding of our current situation is contested, striving to understand it is the only responsible place to start.

We have been here before. Richard Haass wrote a gripping essay three years ago where he speculated that the times in which we live do not recall the Cold War, which arose after World War II.⁴⁹ That time was difficult enough. It was a time where international relations realists took charge of U.S. foreign policy and scoffed at the illusions of liberal international law and the concept of a liberal international legal order. The realists like Morgenthau did not forego law, but they turned to an

⁴⁹ Richard Haass, *The Pandemic Will Accelerate History Rather Than Reshape It*, FOREIGN AFFAIRS (Apr. 7, 2020), <https://www.foreignaffairs.com/articles/united-states/2020-04-07/pandemic-will-accelerate-history-rather-reshape-it> (last visited May 6, 2025).

international policy of co-existence where law was largely an epiphenomenon and thus played no generative role. Their focus was on how to manage the adversarial relationship with the Soviet Union, in which both sides could destroy each other with the mere push of a button, possibly after misconstruing the other's actions. It was a time far from an international law of cooperative problem solving, much less one that supported the liberal norms embedded in the Universal Declaration of Human Rights, whose seventy-fifth anniversary we celebrate on December 10th.

I was raised in Ohio at that time. It may have been a Cold War for a young white boy in Cincinnati, but it was all but cold for those maimed and killed in the proxy wars between the two ideological adversaries. On the nightly news, we watched Americans die, and we watched Vietnamese die, and then Cambodians die, as the war spread to what end? It was a time when the day after student protestors were shot and four killed by the Ohio National Guard at Kent State on May 4, 1970, our sixth-grade home room teacher, Mr. Mjello, started the day by telling us that the students deserved it; they deserved to die. It was a time when the US government helped orchestrate coups that overthrew democratically elected governments and supported right-wing authoritarian regimes in the name of freedom, despite their torture chambers and extrajudicial killings.

No, Haass was not speaking of *that* time. Rather he was speaking of the interwar period beset by economic and geopolitical crises. In Germany, the leading legal thinker was Carl Schmitt. Schmitt theorized law as purely instrumental and political, and he defined politics as an existential struggle between friends and foes—in today's populist terminology between Us and Them—that could only be resolved through domination, and ultimately killing, and thus potentially, a bloodbath. Schmitt theorized law in terms of “who decides on the exception.”⁵⁰ Since the exception is always available, law is without normative constraint, and the concept of the rule of law is illusory, a mask for the “will to power.”⁵¹ Schmitt found the exception “more interesting than the rule,” because “[t]he rule proves nothing; the exception proves everything.”⁵²

Schmitt's work was influential not just on the right, and embraced by the Nazi regime, where he became a party member. It was also influential and remains influential among many on the left. His student, the young Marxist Otto Kirchheimer, who later became a leader of the Frankfurt school which later heavily influenced the US critical legal studies movement, was Schmitt's admiring student. In his early work, Kirchheimer borrowed from Schmitt to applaud Leninism's pursuit of “a brand of politics that ruthlessly distinguishes friend from foe.”⁵³ The foe needed to be eliminated.

For both Schmitt and the early Kirchheimer, liberal democracy was their mutual enemy, reflected in the weakness and indecisive squabbling of Germany's Weimar Republic. The answer for both was purging of the enemy, for Schmitt of the leftists, Jews, and other undesirables; for Kirchheimer of the bourgeoisie and class opponents. Both envisioned a homogeneous society, whether it be composed of Aryan Christian nationalists or a unified working class. Such instrumentalism potentially could lead to pacts among rivals, as it did with the Molotov-Ribbentrop Pact, to ensure the two enemies' dominance over peoples within their respective geographical spheres of influence. That is one take on the theme *Beyond International Law*, and the consequences are easy to foresee.

⁵⁰ CARL SCHMITT, *POLITICAL THEOLOGY: FOUR CHAPTERS ON THE CONCEPT OF SOVEREIGNTY* 5 (George Schwab trans., 2005) (1922).

⁵¹ WILLIAM E. SCHEURMAN, *CARL SCHMITT: THE END OF LAW* 34 (2019).

⁵² SCHMITT, *supra* note 50, at 15.

⁵³ WILLIAM E. SCHEURMAN, *BETWEEN THE NORM AND THE EXCEPTION: THE FRANKFURT SCHOOL AND THE RULE OF LAW* 25 (1997).

Yes, today we are in a different time and place, but—coming back to Hass—we have been here before. Think of the parliamentary cynicism, indecisive squabbling, and threats of government shutdowns of our days. Think of the rise of White Christian Nationalists, Hindu Nationalists, Chinese Nationalists, who view the world in terms of us versus them, of we the people versus the “enemy of the people,” of political ads with opponents in a sharpshooter’s crosshairs.⁵⁴ Think of hate spewed on the internet, of the postings of the young white supremacist who enters the grocery store with body armor and rapid fire weapons to eliminate the other—the other defined not by whether one has blue eyes or gray eyes, wavy hair, straight hair, or no hair, is tall or short, or is pudgy or slim, but on the slight genetic variation affecting the production of melanin and thus the pigmentation of one’s skin. Think of the terrorist entering a synagogue or a mosque strapped with explosives or armed with assault weapons and documenting the killing, all live on a GoPro camera aimed at stirring further hate. Think of militia training, of death threats against our loved ones, of the “active shooter” training sessions psychologically scarring our children, grandchildren, and we as educators, prepping us for that random day.

Think of rising economic insecurity and inequality to levels not seen since the interwar period—coming back to Haass—where people hold multiple, low-wage jobs and yet still are evicted for lacking cash to pay the rent. Think of the homeless camps, of those in tents and those without tents, where, to borrow from Anatole France, “The law, in its majestic equality, forbids rich and poor alike to sleep under [the overpasses of our cities].”⁵⁵

Think of the challenges to science, and the popularization of conspiracy theories, of Pizzagate and Infowars. Even radical postmodernists begin to question the cynical use of distortions, deep fakes, and conspiracy theories, that propagate, confuse, sow doubt, reap distrust, and feed hate.

These *domestic* realities are transnationally linked with the challenges besetting international law and institutions today. Those attacking international law and institutions seek to weaken their constraints. They simultaneously attack and undermine domestic institutions, whether in this country or abroad. Take Russia and its war on Ukraine. Russia launched its blitzkrieg on Ukraine less than one year after Haass wrote his cautioning essay. It did so after poisoning, killing, and otherwise incapacitating domestic opponents through legal charades. This instrumental use of law to dominate, reflected in the phrase *rule by law*, was brilliantly captured in the award-winning Russian film *Leviathan*, which takes place in a small, northern coastal Russian town above the Arctic circle. There, the law is the Leviathan, wielded to destroy any threat to the local powerholder, the mayor.

To turn to Ukraine, it did not pose an external threat to Mr. Putin’s rule, but an internal one. The threat was its democratization, where Ukrainian activists combated corruption and promoted political and civil freedoms, and the Ukrainian government, in turn, sought closer political and economic ties with Europe. These ties would facilitate the conveyance of liberal norms, which also could seep into Russia given the historically close cultural, social, ethnic, and linguistic ties of the two countries’ peoples. In his televised address announcing Russia’s invasion of Ukraine, Putin offered a broad conception of the threats to Russian national security—that paradigmatic exception

⁵⁴ William P. Davis, ‘*Enemy of the People*’: Trump Breaks Out This Phrase During Moments of Peak Criticism, The New York Times (July 19, 2018), <https://www.nytimes.com/2018/07/19/business/media/trump-media-enemy-of-the-people.html> (last visited May 6, 2025); Jeff Muscus, *Sarah Palin’s PAC Puts Gun Sights on Democrats She’s Targeting in 2010*, Huffington Post (Jan. 9, 2011), https://www.huffpost.com/entry/sarah-palins-pac-puts-gun_n_511433 (last visited May 6, 2025).

⁵⁵ ANATOLE FRANCE, *THE RED LILY* 91 (Winifred Stephens trans., 1924) (1894) (The French original reads: “La majestueuse égalité des lois, qui interdit au riche comme au pauvre de coucher sous les ponts, de mendier dans les rues et de voler du pain.”).

to international law and all law. Putin—a la Schmitt—decided on the exception. He blamed “the West” not for any imminent military threat, but rather for its ongoing social and cultural attacks on Russia’s traditional values, including through imposing attitudes that, to quote Putin, “are contrary to human nature.”⁵⁶ Putin saw the extension of legal rights and cultural acceptance of LGBTQ+ peoples as evidence of Western cultural decadence and Western assertions of normative hegemony. His challenge to the international legal order in his invasion of Ukraine, in other words, is not just a question of international relations. It is also, in no small part, endogenous to the internal threats to Putin’s reign through liberalism’s normative demands of tolerance, pluralism, and individual civil, political, and social rights. We face those same challenges here in our own country.

And now we live in the midst of a new outbreak of war between Israel and Hamas. The cycles of calls for vengeance reign while Israeli civilians and Palestinian civilians and civilians of other places die and suffer. Does not law provide a foundational framework for us to work toward peace and human exchange and better understanding? Are we to think beyond international law at these times? Does not standing for and upholding the requirements of international law offer a better means toward a pathway to peace grounded in the upholding of human dignity?

Legal Realism: Five Dimensions

In the United States, a movement arose in response to the traumatic economic and social challenges of the interwar period. It became known as legal realism. I, with others, have written on this development as part of a call for a new legal realism, which is of considerable relevance for international law today.⁵⁷ There are many takes on what legal realism means since its proponents were less an organized school than representatives of a common intellectual thrust in response to crises that called for law and policy that were more responsive to social conditions. I foreground three interacting components of legal realism: pragmatism, empiricism, and experimentalism, in which open inquiry and non-dogmatic response and adaptation from experience are critical.

The legal realists were informed by and grounded in pragmatist philosophy, building upon the leading political philosopher of the time, John Dewey. Dewey and the other pragmatists depart from post-modernists today in their view of truth. As non-dogmatists operating in a world of uncertainty and flux, they do not put forward a view of truth with a capital *T*. Like postmodernists today, they learned and built from scientific understandings of relativity and quantum theory. They understood that what we see is shaped by where we stand, and that where we stand affects where we look. They further understood that when we act, we affect what there is to investigate and assess. Facts and acts, cognition and volition, are inextricably in relation with each other.

What pragmatists nonetheless stress, however, is the importance of *truth-seeking*, and thus of empirical inquiry, the second component that I stress. Legal realism is committed to empirical inquiry and investigation, whether of a qualitative or quantitative bent. For legal realists, law and legal decision making should be grounded in an empirical understanding of social context. If law is to be institutionally responsive, it must build from an understanding of the contexts in which we are situated. Truth-seeking is a process that involves reasoning and deliberation. We strive, however

⁵⁶ Vladimir Putin, Russ. President, Nationally Televised Address (Feb. 24, 2022), in *Transcript of Vladimir Putin’s Speech Announcing ‘Special Military Operation’ in Ukraine*, SYDNEY MORNING HERALD (Feb. 24, 2022), <https://www.smh.com.au/world/europe/full-transcript-of-vladimir-putin-s-speech-announcing-a-special-military-operation-20220224-p59zhq.html> (last visited May 6, 2025).

⁵⁷ See, e.g., Victoria Nourse & Gregory Shaffer, *Varieties of New Legal Realism: Can A New World Order Prompt A New Legal Theory?*, 95 CORNELL L. REV. 61 (2009); Gregory Shaffer, *Legal Realism and International Law*, in INTERNATIONAL LEGAL THEORY: FOUNDATIONS AND FRONTIERS 82 (Jeffrey L. Dunoff & Mark A. Pollack eds., 2022).

fallibly and however reflexively, to get at *right* answers. What legal realism opposes is decisionism—the idea that law creates no constraints because the sovereign decides on the exception. In 2012, Tom Ginsburg and I published a piece on *The Empirical Turn in International Law*,⁵⁸ and this year ASIL launched a new interest group on International Law and Social Science that builds from legal realist traditions.

Third, given that we live in a world of uncertainty, legal realism stresses the importance of experimentalism as part of pragmatic problem-solving. It stresses the importance of creating institutional structures that can respond to uncertainty and adapt to changing contexts in light of our experience. It calls for us to break down larger problems into smaller ones where we can make meaningful improvements.

Legal realism integrates these different components—pragmatism, empirical investigation, and experimentation with a view toward adaptive problem-solving. The Roosevelt administration, in which so many legal realists worked, exemplified such an approach in response to the onslaughts of the Great Depression with its pronouncement of the four freedoms.⁵⁹ The administration had its failings, as all administrations do, but it took experimental action in response to problems in light of experience in a world of considerable uncertainty.

Finally, let me add two further complementary dimensions to legal realism, a critical and an institutional one. There is an important critical dimension to legal realism because of its views on uncertainty and its advocacy of truth-seeking despite inevitable fallibility. Because reality is dynamic and shaped by our actions, and because our perceptions of reality are fallible and shaped by where we stand, legal realism stresses the importance of humility, reasoned deliberation, and democratic exchange. It requires reflexivity about what shapes our perceptions if we are to be open, responsive, and effective. It requires deliberation where we hear the views and perspectives of others, particularly those who are more vulnerable and generally less represented. Social equality is thus a core component of liberty for legal realists, so that people have the capacity to pursue their life choices and participate in broader social and political processes.

Critique, however, is not sufficient for legal realists working in a pragmatist tradition. Problem-solving requires institutions and since institutions are highly imperfect, difficult choices must be made, a point to which I will turn shortly.

Transnational Legal Ordering and International Law Today

So, what are the lessons for international law in terms of where we go today? How might we positively conceive, as international lawyers, of engagement beyond international law? As a starting point, given the rise of authoritarianism in the 1930s and the horrors of World War II, persuading our fellow citizens of what the past teaches us regarding the importance of international engagement, and its relation with domestic policy—and in particular social policy—is critical. Out of the ashes of World War II, new international institutions arose, and declaratory aspirations proclaimed. But the Cold War almost immediately stymied their promise. International law scholars and advocates thus turned to alternative mechanisms that are relevant for this conference's theme Beyond International Law.

⁵⁸ Gregory Shaffer & Tom Ginsburg, *The Empirical Turn in International Legal Scholarship*, 106 AM. J. INT'L L. 1 (2012)

⁵⁹ Franklin Roosevelt, U.S. President, Four Freedoms Speech, Annual Message to Congress (Jan. 6, 1941), in *President Franklin Roosevelt's Annual Message (Four Freedoms) to Congress (1941)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/president-franklin-roosevelts-annual-message-to-congress> (last accessed Oct. 24, 2023).

I turn first to the concept of transnational law and its problem-solving mechanisms, as developed by Phillip Jessup in 1956. Jessup wrote of the concept of transnational law as problem solving during the Cold War when hope in public international law and public international institutions had withered. He had served on the United States delegation to both the 1943 Bretton Woods conference and the 1945 San Francisco conference that created the United Nations. By 1956, however, the prospect of international institutions and international law as problem-solvers had dimmed. During those polarized times, Jessup himself was attacked and investigated as a communist sympathizer by U.S. Senator Joseph McCarthy during the Red Scare.⁶⁰ Jessup turned to analyze other means of fostering international problem solving which incorporated but went *beyond* public international law. He defined transnational law as “all law which regulates actions or events that transcend national frontiers.” It includes public international law, private international law, and “other rules which do not wholly fit into such standard categories.”⁶¹

Jessup’s turn to transnationalism is highly relevant to this conference’s theme of thinking beyond international law. If international law is viewed solely in terms of the formal sources listed in Article 38 of the Statute of the International Court of Justice, it clearly is insufficient for responding to today’s problems. From a socio-legal perspective, I have developed with others the related concepts of transnational legal ordering and transnational legal orders.⁶² This approach focuses on processes that transcend national boundaries and give rise to the transnational construction and understanding of problems and legal responses to them. Public international law is a tool, whether it assumes binding hard law or non-binding soft law forms, that is one component of these processes. In many areas, international organizations and transnational networks formulate principles, guidelines, model laws, and peer review mechanisms to monitor progress in achieving common ends, and to adapt goals and mechanisms in light of experience. Work on transnational legal ordering assesses both how problems are constructed and understood, and how legal norms in response to such problems settle at multiple levels, from the international to the national and, most importantly, the local in terms of practice.

From a legal realist perspective, at the international level, institutions are needed to engage in pragmatic problem-solving grounded in empiricism and experimentalism, and that are adaptive in light of experience. I turn now to the work of Chuck Sabel who has been collaborating with others to assess different experimental techniques to unsettle gridlocks and holdups so that we can more effectively respond to transnational challenges, such as climate change. His important book with David Victor, *Fixing the Climate*, exemplifies this approach.⁶³ The two build on numerous examples of international coordination and problem-solving in different contexts characterized by high uncertainty and significant risks.

A transnational experimentalist approach aims to catalyze structured processes of regulatory dialogue that bring together public and private actors at multiple levels of governance. Officials working on distinct issues in particular regulatory fields jointly deliberate over and set regulatory goals and measures to gauge their achievement, while permitting variation in how agencies pursue the attainment of these goals in light of their varying contexts. These agencies commit to report to

⁶⁰ Oscar Schachter, *Philip Jessup’s Life and Ideas*, 80 AM. J. INT’L L. 879, 885-89 (1986).

⁶¹ PHILIP JESSUP, TRANSNATIONAL LAW 2 (1956).

⁶² TRANSNATIONAL LEGAL ORDERS (Terence C. Halliday & Gregory Shaffer eds., 2015); Gregory Shaffer & Carlos Coye, *From International Law to Jessup’s Transnational Law, from Transnational Law to Transnational Legal Orders*, in THE MANY LIVES OF TRANSNATIONAL LAW: CRITICAL ENGAGEMENTS WITH JESSUP’S BOLD PROPOSAL 126 (Peer Zumbansen ed., 2020).

⁶³ CHARLES F. SABEL & DAVID G. VICTOR, *FIXING THE CLIMATE: STRATEGIES FOR AN UNCERTAIN WORLD* (2022).

each other and central bodies regarding regulatory outcomes, and they participate in peer review processes aimed at improvement and potential reassessment of goals.⁶⁴ This approach involves ongoing mutual scrutiny of outcomes and their effectiveness based on information exchange by regulators committed to regulatory improvement and attentive to risk, including potentially catastrophic risks in many sectors, ranging from pharmaceuticals, medical devices, food, agriculture, and finance. The development, implementation, and review of Hazard Analysis of Critical Control Points (HACCP) systems to identify and protect against food pathogens illustrates such a systemic approach to reduce and respond to transnational risks.⁶⁵ Given variation in local contexts, implementation ultimately depends on local actors engaged in local contexts.

In their book, Sabel and Victor explain how countries addressed the depletion of the ozone layer through a framework treaty that catalyzed such an empirically based, experimental approach. Both the nature of the problem and feasible solutions to it were beset by considerable uncertainty. This uncertainty required experimental projects from which the parties and industry could learn and develop new technologies and alternatives. An international treaty—the 1985 Vienna Convention and its follow-up, the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer—set forth the necessary framework with broad goals, which were to progressively curtail and eliminate production methods and substances that threatened the Earth’s ozone layer. Such solutions would require innovation and the creation of new industries, building from experience, which would involve many false starts. The treaty catalyzed the creation of structures that brought together scientists, regulators, and industry to study the problem and develop alternative technologies for production in different economic sectors.

The system created a schedule for progress that the parties reviewed and adapted, as new knowledge and challenges arose. Problem-solving was broken down and addressed contiguously and serially in different sectors. Networks of committees convened users and producers to spur and assess efforts to find concrete, economically feasible, sector-specific solutions. To give just one example, study was required regarding the question, on the one hand, of “whether a refrigerant that depletes the ozone layer can be replaced by an analogous and more benign alternative,” and, on the other hand, of “whether refrigeration systems that utilized these new chemicals can work reliably and at an acceptable cost.”⁶⁶ Both questions were critical. The process spurred pilot projects that if successful could attract larger scale experimentation. Oversight bodies granted exemptions and extended phaseout timelines in response to unexpected challenges. The parties created a Multilateral Fund to build local capacity and provide technologies for developing countries, in which local contextualization was needed. Positive and negative incentives were critical in promoting change. Positive inducements through financial and technological transfers complemented the threat of trade sanctions involving “potentially draconian penalties for governments and firms” that did not cooperate.⁶⁷

Sabel and Victor show how this model is central for tackling the multi-faceted problem of climate change. We have a treaty, one now based on the pledging of commitments, as MJ Durkee writes.⁶⁸ Such pledging is not formally binding or enforceable. It exemplifies a type of mechanism that goes

⁶⁴ Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 GEO. L.J. 53, 55 (2011).

⁶⁵ See Charles F. Sabel & William H. Simon, *Contextualizing Regimes: Institutionalization as a Response to the Limits of Interpretation and Policy Engineering*, 110 MICH. L. REV. 1265, 1283, 1285 (2012).

⁶⁶ SABEL & VICTOR, *supra* note 63, at 5.

⁶⁷ *Id.* at 7.

⁶⁸ Melissa J. Durkee, *The Pledging World Order*, 48 YALE J. INT’L L. 1, 1 (2023).

beyond traditional public international law. It is critical in providing a coordinating device, one which can inspire national action and help spur and support domestic actors who press for further national action. Yet what will be required is to go beyond the treaty and the ensuing pledges, and to break down the problem of climate change into its many components, and to enable and support networks that bring together regulators, industry, and scientists to address challenges within particular sectors. The treaty provides an overarching collective goal and thus legitimating mission. But most work will occur outside of it, whether by clubs of nations or individual national and sub-national governments, working with industry, scientists, and civil society, who reference it and its goals. Some success has already been attained in some sectors, such as shipping, in what Dan Bodansky calls a micro transnational legal order, in that international standards and practices settle transnationally with the aim of reducing greenhouse gas emissions in a sector.⁶⁹ But so much more is needed to address the overarching problem of climate change.

To turn to the institutional component of legal realism, there is no single institutional alternative to addressing global challenges in a pluralist world, and thus comparative institutional analysis is needed. Such analysis accepts that there is no institutional nirvana but rather a choice among imperfect institutions that involve different tradeoffs. For legal realists, these choices should be made and adapted in light of experience, as empirically assessed.

One institutional alternative is where a lead regulator takes action that catalyzes market responses affecting private actors and regulators transnationally. Paul Stephan's book *The World Crisis and International Law* highlights how, in a polarized world, this type of transnational process can provide potential advances. There are risks to such an approach for less powerful countries because jurisdictions with large markets are best positioned to adopt regulations that have transnational effects. Regulation in such jurisdictions is more likely to be deemed legitimate if the target is not to change other countries' laws, but rather to protect the regulating jurisdictions' citizens, or to avoid complicity in human rights violations, environmental degradation, or other harmful acts abroad through the consumption of products domestically.⁷⁰ Take, for example, California's creation of emission standards, how they affect industry production decisions to access California's huge market, and how the standards eventually diffuse, including transnationally. There are tradeoffs in terms of participation and outcomes between such unilateral approaches and multilateral ones.⁷¹ From a transnational perspective, these approaches also interact, as when multilateral institutions create constraints on unilateral measures to require that they be non-discriminatory, transparent, and provide for due process.⁷²

Regulatory entrepreneurs also try to persuade others to adopt similar regulations that prescribe harmful acts out of competitiveness concerns. These efforts can spur the multilateralization of domestic legal norms through treaties. Take the issue of combating corruption. Rachel Brewster documented how the U.S. first enacted a statute—the Foreign Corrupt Practices Act (FCPA) in 1977,

⁶⁹ Daniel Bodansky, *Climate Change: Transnational Legal Order or Disorder?*, in TRANSNATIONAL LEGAL ORDERS 287, 290 (Terence C. Halliday & Gregory Shaffer eds., 2015).

⁷⁰ I develop the distinction between attempts to impose changes on other countries, on the one hand, and the aim to not be complicit in the violation of labor rights and environmental degradation through consumption of products produced in harmful ways, on the other hand. See Gregory Shaffer, *Retooling Trade Agreements for Social Inclusion*, 2019 U. ILL. L. REV. 1 (2019); Gregory Shaffer, *Governing the Interface of U.S.-China Trade Relations*, 115 AM. J. INT'L L. 622 (2021).

⁷¹ Gregory Shaffer & Daniel Bodansky, *Transnationalism, Unilateralism and International Law*, 1 TRANSNAT'L ENV'T L. 31, 35 (2012).

⁷² See, e.g., the WTO Appellate Body's decision in the famous shrimp-turtle case, discussed in Gregory Shaffer, *Power, Governance and the WTO: A Comparative Institutional Approach*, in POWER IN GLOBAL GOVERNANCE 130 (Michael Barnett & Bud Duvall eds., 2004).

which criminalized the bribery of foreign officials, made companies and their officers liable for corruption regardless of the location of the conduct, and imposed accounting requirements on publicly traded companies listed on U.S. exchanges to promote transparency.⁷³ However, the United States only rarely enforced the FCPA during its first two decades because of resistance from others countries about application to their companies, as well as from U.S. companies concerned that they would be placed at a competitive disadvantage.⁷⁴ The United States thus sought to convince other advanced economies to adopt similar laws, and they negotiated the OECD Anti-Bribery Convention (formally named the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), which was concluded in 1997 and entered into force in 1999.⁷⁵ Today the Anti-Bribery Convention includes all 38 OECD-members, as well as six non-members, including Brazil. It includes a peer review process that helps to monitor compliance and create pressure for enforcement. It legitimized U.S. enforcement against foreign companies as well as national ones, so that U.S. companies would no longer be disadvantaged, and U.S. enforcement dramatically increased.⁷⁶ Importantly, the U.S. did not prosecute bribe-takers, but rather bribe-payers, such as multinational corporations. Who are complicit in corruption The effort to combat corruption subsequently spread to other treaties and international instruments, including the 2003 UN Convention against Corruption, which has 189 parties as of 2023.⁷⁷

The European Union is at the forefront of regulatory norm making that engages transnational processes. Take EU rules on data privacy, chemicals, and climate change. One of my first articles as a junior scholar was on the mechanisms through which EU data privacy rules would have transnational impacts. In her later book *The Brussels Effect*, Anu Bradford illustrates how, and the conditions under which, the EU more generally has been a regulatory entrepreneur in its responses to problems within the EU that have transnational implications in light of the transnational nature of the problem.⁷⁸

To return to the challenge of climate change, on October 1, 2023, the EU's Carbon Border Adjustment Mechanism (CBAM) took effect, raising both international controversy and promise. Developing countries, in particular, are concerned about its impact on their trade and development prospects. Yet they too are threatened by climate change and their citizens generally are more vulnerable than those in wealthier countries. They are right that technology transfers and financial assistance are required for a just transition. Positive incentives must be combined with negative ones, and hopefully CBAM and responses to it will help catalyze them in more effective ways.

As part of dynamic transnational processes, the EU legislation can help spur domestic action abroad so that norms and mechanisms to effectuate them spread. For example, Vietnam and Indonesia have announced plans for a carbon tax and emissions trading scheme.⁷⁹ And China will likely expand its existing emissions trading system. The U.S. is working with the EU to see what can be done to reconcile their different approaches. The processes are dynamic and need to be seen in that vein as part of transnational legal ordering going beyond conventional international law. They could fail,

⁷³ Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1.

⁷⁴ Rachel Brewster, *Enforcing the FCPA: International Resonance and Domestic Strategy*, 103 VA. L. REV. 1611, 1614 (2017).

⁷⁵ Org. for Econ. Coop. & Dev. [OECD], *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (Nov. 21, 1997), <https://www.oecd.org/daf/anti-bribery/oecd-anti-bribery-convention-booklet.pdf> (last visited Oct. 25, 2023).

⁷⁶ Brewster, *supra* note 74, at 1617.

⁷⁷ U.N. Convention Against Corruption, Oct. 31, 2003, 2349 U.N.T.S. 41.

⁷⁸ ANU BRADFORD, *THE BRUSSELS EFFECT: HOW THE EUROPEAN UNION RULES THE WORLD* (2020).

⁷⁹ *How Carbon Prices Are Taking over the World*, THE ECONOMIST (Oct. 1, 2023), <https://www.economist.com/finance-and-economics/2023/10/01/how-carbon-prices-are-taking-over-the-world> (last visited May 6, 2025).

and if they do, we will face systemic, existential consequences. But engaging in these transnational processes by using tools that both incorporate and go beyond public international law is the point.

I conclude with words from the cosmopolitan philosopher Kwame Anthony Appiah, “As populist demagogues around the world exploit the churn of economic discontent, the danger is that the politics of engagement could give way to the politics of withdrawal.”⁸⁰ Forgetting that “we are all citizens of the world—a small, warming, intensely vulnerable world—would be a reckless relaxation of vigilance.” “Elsewhere,” Appiah writes, “has never been more important.” Engaging collaboratively and transnationally with elsewhere is essential if we are to address the challenges of our time. We have been here before. International law and transnational legal ordering have never been in greater need. Thinking *beyond* international law does not signify its abandonment. We must rather integrate international law as part of broader transnational processes so that we pragmatically and cooperatively enhance our understanding of problems, and effectively address them.

I applaud the organizers of this international conference here in the heart of New York City, across just seven avenues from the United Nations, for convening us to deliberate over how to think *Beyond International Law* to address more effectively the common but differentiated challenges that confront us. We live in uncertain, dangerous times. We must learn from what we don’t know. How? The central way to do so is through pragmatic engagement in problem solving involving transnational cooperative structures and experimental action and empirical analysis that dynamically and recursively interact. In that way, we may adapt our understandings and practices to address the different challenges we face.

To channel Yogi Berra, an icon of this great city, “It’s tough to make predictions, especially about the future.”⁸¹ And particularly because “the future ain’t what it used to be.”⁸² As a player, Berra new uncertainty. As thinkers and actors, we must develop ways to respond cooperatively and effectively to uncertainty, working through and Beyond International Law.

⁸⁰ Kwame Anthony Appiah, *The Importance of Elsewhere: In Defense of Cosmopolitanism*, FOREIGN AFFAIRS (Feb. 12, 2019), <https://www.foreignaffairs.com/world/importance-elsewhere-cosmopolitanism-appiah> (last visited May 6, 2025).

⁸¹ Paul Newberry, *Column: A Bold Prognostication of What College Football Will Look Like a Decade from Now*, ABC NEWS (July 28, 2023), <https://abcnews.go.com/Sports/wireStory/column-bold-prognostication-college-football-decade-now-101776949>. (last visited Oct. 23, 2023)

⁸² *Yogi Berra’s Most Memorable Sayings*, MLB (Dec. 7, 2021), <https://www.mlb.com/news/yogisms-best-yogi-berra-sayings>.

International Law Weekend Midwest 2024

International Law Weekend Midwest 2024 was held at the Cleveland Browns Stadium, Kardia Club, 100 Alfred Lerner Way, on September 26, 2024, and Case Western Reserve University School of Law, 11075 East Blvd, Cleveland, on September 27, 2024. The theme was “The Geneva Conventions at 75: Need for Innovation.” Case Western Reserve University School of Law organized the weekend. It featured an Opening Address, a Lunch Address, four panels, and Closing Remarks. This symposium commemorated the 75th Anniversary of the 1949 Geneva Conventions. In an age of new technology and means of warfare, it focused on whether there is a need for a new Geneva Convention for the challenges of the 21st century.

The Opening Reception at the Cleveland Browns Stadium on September 26, 2024, included drinks, dinner, and music. Christopher Rassi, Chief of Staff and Director, Office of Secretary General, International Federation of Red Cross and Red Crescent Societies (IFRC) in Geneva, Switzerland, was the After Dinner Speaker.

The Opening Address, titled “75 Years of the Geneva Conventions: Successes and Failures,” on September 27, 2024, featured James Johnson, Chief Prosecutor of the Residual Special Court for Sierra Leone, and Michael P. Scharf, Associate Dean and President of the American Branch.

John Bellinger, Arnold & Porter, former U.S. Department of State Legal Adviser, and a National Security Council Member, gave the Lunch Address.

On September 27, 2024, the panels were:

- Is there a need for a new Geneva Convention on Cyber Warfare? (chaired by Michael Kelly)
- Is there a need for a new Geneva Convention on the Treatment of Non-State Actors? (chaired by Avidan Cover)
- Is there a need for a new Geneva Convention on Autonomous Weapon Systems? (chaired by Paul Williams)
- Is there a need for a new Geneva Convention on the application of IHL to Conflict in Outer Space? (chaired by Steve Petras)

Peter Evans, Head of the ICRC Unit for Relations with Arms Carriers, gave closing remarks.

International Law Weekend 2024

International Law Weekend 2024 was held at the New York City Bar Association at 42 West 44th Street, New York City, on October 24, 2024, and Fordham University School of Law on October 25 to 26, 2024. The theme of the Weekend was “Powerless Law or Law for the Powerless?” The American Branch of the International Law Association organized the Weekend. It featured thirty-five panels that discussed how international law can transcend perceptions and misperceptions of its powerlessness and fulfill its aspirations of balancing power through principles of justice, equality, and dignity.

The Presidential Opening Plenary was held on Thursday evening, October 24, 2024, and was titled “Powerless Law or Law for the Powerless: The Once and Future ICJ.” Leila Nadya Sadat and Muhammad U. Faridi (President, New York City Bar Association) gave welcome remarks. Presidential Opening Plenary speakers were Professor Lori F. Damrosch (Hamilton Fish Professor of International Law and Diplomacy, Columbia Law School), Professor Harold Hongju Koh (Sterling Professor of International Law, Yale Law School), Professor Sean D. Murphy (Manatt/Ahn Professor of International Law, George Washington University School of Law; Special Rapporteur for Crimes Against Humanity), and Dr. Nilüfer Oral (Director of the Centre for International Law, National University of Singapore). Michael P. Scharf chaired this panel.

On Friday, October 25, 2024, the Friday Plenary Panel titled “Powerless Law or Law for the Powerless?” featured speakers from the European Journal of International Law. The Friday Plenary Panel speakers were J.H.H. Weiler (Joseph Strauss Professor of Law, NYU Law), Dapo Akande (Chichele Professor of Public International Law, University of Oxford; Member, UN International Law Commission), Diane Desierto (Professor of Law and Global Affairs, University of Notre Dame Law School), and Marko Milanovic (Professor of Public International Law, University of Reading School of Law). Joseph Landau (Dean and Paul Fuller Professor of Law, Fordham University School of Law) gave welcome remarks.

On Saturday, October 26, 2024, Ann Skelton (Chair, UN Committee on the Rights of the Child; Professor and UNESCO Chair in Education Law in Africa, University of Pretoria) gave the lunch keynote. She was introduced by Warren Binford (W.H. Lea for Justice Endowed Chair in Pediatric Law, Ethics and Policy, University of Colorado).

On Thursday, October 24, 2024, before the Presidential Opening Plenary, the Emerging Voices session was held at the New York City Bar Association. Irene Calboli (Regents Professor of Law, Texas A&M University School of Law), Christine C. Carpenter (PhD Student, University of Cambridge), and Asaf Lubin (Associate Professor of Law, Indiana University Maurer School of Law) moderated this session and provided feedback for participants. Speakers were Matei Alexianu (Associate, Foley Hoag), Anja Bossow (SJD Candidate, NYU Law), Eoin Jackson (PhD Student, London School of Economics and Political Science), Susan Ann Samuel (PhD Researcher, University of Leeds), Liline Steyn (PhD Candidate, Geneva Graduate Institute), and Anastasiia Zhuravel (PhD Candidate, Hertie School Berlin). The Emerging Voices program was sponsored in full by the Silicon Valley Community Foundation.

On Friday, October 25, 2024, the panels were:

- The Core Paradox of International Refugee Law (chaired by Rez Gardi)
- The War in Ukraine: Lessons Learned and Challenges Ahead for International Criminal Law (chaired by Gabor Rona)
- Has the President Become a National Security Threat? (chaired by Craig Martin)
- “The World Together” or a World Apart? Pandemic Prevention, Preparedness and Response as Law of the Powerless (chaired by Ana Santos Rutschman)
- International Investment and Human Rights: How Does International Law Control Environmental Impact on Local Communities? (chaired by David L. Attanasio)
- South African Branch: Recent African Contributions to the Development of International Humanitarian Law (chaired by Clea Strydom)
- The Veto (a film) (chaired by Tim Slade)
- Protection of People at Sea: Human Rights on the Oceans (co-chaired by Coalter Lathrop and Carole Petersen)
- Does International Law have the Power to Limit Cyberwar? (chaired by Amanda Ghahremani)
- Hot Topics: The Middle East in Crisis (chaired by Frédéric G. Sourgens)
- The Pursuit of Gender Justice in Afghanistan and Beyond (chaired by Megan Manion)
- Closing the Chemical Weapons Impunity Gap: An International Tribunal? (chaired by Congressman (ret.) Luis Fortuño)
- Think Globally and Act Locally: Public and Private Sector Collaboration to Address Climate Change (chaired by Allan T. Marks)
- Empowering International Law to Address Rising Tensions in Outer Space: The Woomera Manual on the International Law of Military Space Activities and Operations (chaired by Jack M. Beard)
- Ocean (In)Justice in Planetary Futures (chaired by Angelina Fisher)
- Approaches to Capacity and Consent: Their Evolution and Implementation (chaired by Jessica Tueller)
- Crimes Against Humanity: From Draft Articles to New Treaty in a World on Fire? (chaired by Leila Nadya Sadat)
- Recognition and Enforcement of the Human Right to a Healthy Environment: Parallel Proceedings in International Courts – A Roundtable Discussion (chaired by Milena Sterio)
- Diplomatic and Consular Immunities: Time for Revisions? (chaired by David P. Stewart)
- The Evolving Geopolitical Landscape and Risks for Global Aviation (chaired by Marcelo L. Garcia)

On Friday evening, October 25, 2024, UNICEF hosted a reception at its headquarters in United Nations Plaza. Ann Skelton, Warren Binford, and individuals from the event’s sponsor, The Kempe Foundation, spoke. Additionally, International Law Trivia was hosted at Fordham University School of Law. Madaline George and Michael P. Scharf emceed the International Law Trivia.

Saturday, October 26, 2024, opened with a Member’s Meeting and the ABILA Annual Award Presentations. The Honorable Charles N. Brower received the ABILA Outstanding Achievement Award and gave a keynote address. Professor Philip Moremen received the Charles Siegal Distinguished Service Award. The ABILA Book of the Year Award went to Laurence Burgogue-

Larsen for *The Three Regional Human Rights Courts in Context: Justice that Cannot be Taken for Granted*; the ABILA Award for a Book on a Practical or Technical Subject went to Sean D. Murphy and Edward T. Swaine for *The Law of United States Foreign Relations*; the ABILA Book Award for a First-time Author went to Patryck Labuda for *International Criminal Tribunals and Domestic Accountability: In the Court's Shadow*; and the ABILA Best Edited Volume Award went to Melissa J. Durkee for *States, Firms, and Their Legal Fictions: Attributing Identity and Responsibility to Artificial Entities*.

On Saturday, October 26, 2024, the panels were:

- Centering Race and Empire in Human Rights Scholarship (chaired by S. Priya Morley)
- The UN Convention on the Rights of the Child as “Law for the Powerless” Children in America (chaired by Barbara Stark)
- Hypocrisy and Double Standards in International Law (chaired by David Hughes)
- Empowering International Space Law: Old Laws, New Powers, and Possible Futures (chaired by Valerie Oosterveld)
- The Rights of Children to Be Free of Labor and Exploitation: To What Extent Are They Now Protected by Customary International Law? (chaired by Brian D. Lepard)
- Incidental Proceedings Before the ICJ: Enforcing International Law or Exposing its Limits? (chaired by Melina Lito)
- Powerless and Unlawful? Protecting the Rights of Climate Refugees (chaired by Sumudu Atapattu)
- David v. Goliath: Harnessing the Power of Artificial Intelligence in International Arbitration (chaired by Joseph L. Choe)
- WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (chaired by Sean Flynn)
- Power to the People: Collaborative Digital Investigations into Protest-Related Violence in Iran (chaired by Jessica Peake)
- Claiming Power: Centering Justice for Victims in International Law (chaired by Rajika L. Shah)
- Beyond Compliance: Reflections on a Protective Environment for Children in War (chaired by Warren Binford)
- The Legitimacy of Power and the Power of Legitimacy (chaired by Ioanna Tourkochoriti)
- Arbitrating with International Organizations (chaired by Michael J. Moffat)
- Hot Topics: State Responsibility and Remedies Under International Law
- Pathways to Employment in International Law (co-chaired by Angela Benson and Michael Peil)

The American Branch extends its gratitude to the 2024 ILW Program Committee, composed of: Warren Binford (Co-Chair; University of Colorado), Madaline George (Co-Chair, White & Case LLP), Frédéric Sourgens (Co-Chair, Tulane Law School), Diane Marie Amann (University of Georgia Law School), Michael Garcia Bochenek (Human Rights Watch), Chloe Baldwin (Steptoe LLP), Christine Carpenter (Dechert LLP), Rez Gardi (Refugees Seeking Access at the Table), Preston Lim (Villanova University, Charles Widger School of Law), Asaf Lubin (Indiana University Maurer School of Law), Viren Mascarenhas (Milbank LLP), Jessica Peake (UCLA Law), Douglas Pivnichny (UN Legal Affairs), Naomi Rothenberg (King County Department of Public Defense), Hadley Rose Staley

(Friends of the Public-Private Partnership for Justice Reform in Afghanistan), Achintha Vithanage (Pace University Law), and Elisabeth Wickeri (Fordham University School of Law).

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INTERNATIONAL LAW WEEKEND 2024
FORDHAM UNIVERSITY SCHOOL OF LAW
OCTOBER 24, 2024

PRESIDENTIAL HIGH-LEVEL OPENING PLENARY

POWERLESS LAW OR LAW FOR THE POWERLESS: THE ONCE
AND FUTURE INTERNATIONAL COURT OF JUSTICE

BY LORI DAMROSCH, MUHAMMAD U. FARIDI, HAROLD HONGJU KOH, SEAN D.
MURPHY, NILÜFER ORAL, LEILA N. SADAT, AND MICHAEL P. SCHARF

Leila N. Sadat:

Good evening, everybody. Thank you so much for joining us for International Law Weekend 2024. My name is Leila Sadat. I'm the current chair of the American branch of the International Law Association, and as I was flying in from St Louis, where I teach international law at Washington University, I was reminiscing about my very first ILW 30 years ago. So, it's been a long time here in the New York City Bar Association building, and this weekend has grown considerably since then. We cover 37 panels and keynote addresses; we had to move to Fordham Law School because we now have 1,300 registrants for this conference, including all of you. Thank you. And for our board and the organizers, it has truly been a labor of love. This year, I think our conference is on a particularly auspicious day. It's United Nations Day. It's the 79th anniversary of the entry into force of the United Nations Charter. I was over at the UN today, and the mood is determined and somber. I think that fits with the theme that was so aptly chosen by the Co-Chairs of the organizing committee: Powerless Law or Law for the Powerless? What is the status, the state, the effectiveness, and the importance of international law today. Frédéric Sourgens, Madaline George, and Warren Binford, our three Co-Chairs, have worked unbelievably hard. We've all put in a ton of time on this conference, and I think you will benefit from their hard work, from the diversity, from the longevity, in a sense, of longitudinal and deep conversations that you'll have about every aspect of international law, whether it's arbitration, state, responsibility, war, climate change, outer space, law of the sea, trade, intellectual property, every aspect of international law is going to be in the weekend program.

There is both determination and worry at the United Nations at this time. Wars are ongoing in several regions of the world. Judgments of the International Court of Justice that the warring parties are ignoring, arrest warrants of the International Criminal Court that are being ignored by states, even States Parties to the court, and even national courts and national systems are pushing back to some degree against international law. At the same time, we are a community of international lawyers, students of international law, practitioners, and academics, and we believe that law matters. And so, what we believe is that when it gets tough, and it gets tough sometimes when you see unenforced court orders, and you see victims dying by the 10s of 1000s as the bombs fall, we believe that law still matters. It's our job as lawyers to work even harder so that international law and international institutions can become more, not less, effective. I wish you all a very, very successful conference.

We're proud to be the American Branch of the global ILA. We're very proud to be part of a 5000-strong group of international lawyers with 66 branches all over the world. So, thank you again for

coming. I hope you enjoy the weekend. It's now my pleasure to introduce the next individual who will welcome you, and that is Muhammad Faridi from the New York City Bar Association. He's their president, and we've been coming to this location for years to host our conference. We're very proud to introduce the New York City Bar Association President. Thank you.

Muhammad U. Faridi:

My task tonight is relatively simple. It's not to speak about international law. The issues relating to international law, be they thorny and vexing and perhaps interesting and thought-provoking, are outside of the scope of what I will speak about in the short moment I have here. My task, simply, is to welcome you to our Association. Welcome. Our association is about 154 years old, and we fancy ourselves as one of the most prominent Bar Associations in America and perhaps the world. I think that one thing that adds to our prominence is the fact that we have been given the honor in the last 40 years to host this particular reception every single year, and I hope that we will continue to be given that honor on a going-forward basis. And I hope that our organizations have other ways to work together.

Our organization has over 24,000 members and about 154 committees that focus on substantive areas of the law, including international law. So, there are a lot of opportunities for cross-pollination. I looked through the program agenda for this year's theme, and there are two things that stood out to me. The first theme is the actual theme for this year's gathering: powerless law, or law for the powerless. As a student of international law, and sometimes a practitioner of public and private international law, I confess that I, too, sometimes wonder whether the rule of law at the international level faces an existential threat. I, too, sometimes wonder whether our system is capable of protecting vulnerable and marginalized people against aggression, hunger and exploitation, and I, too, sometimes wonder whether the framework that currently exists can provide the powerless with a platform to advance their rights and interests. In some ways, I feel as dismayed today as I did back in 2003 during the lead-up to the Iraq War, when many around the world felt that the international structure was not capable of protecting the marginalized people from aggression and brutality. So, there is no better time to clear the misperceptions that relatively lay people like me have about the potential and the power of international law and to underscore that it is possible, through engagement and advocacy, to use international law to rebalance the inequities that exist in our world.

The second thing that stood out to me when I looked through the program agenda is the super impressive list of folks leading the discussions. Impressive, not just based on their credentials but also for another reason. I read the monograph that Rosa Brooks wrote a couple of decades ago about her tenure at US State Department in the 1990s,⁸³ and she noted that when it came to the more traditional subjects of international law, state sovereignty, international security, territorial integrity... The world of international law was very much male-dominated. And more recently, if you read the seminal work of Hilary Charlesworth and Christine Chinkin, they emphasize that the absence of women in the development of international law has produced a very narrow and inadequate jurisprudence that has legitimized the fundamental inequities that exist in our world and the call for a dramatic rethinking of international law this time through the inclusion of the marginalized, the powerless and those who were previously excluded from the conversation. So, that brings me back to the pamphlet for this year's program. It is one of the most inclusive programs I have seen in the last several years, and you have set a really high bar for the other professional associations in our world. So, I hope you all have

⁸³ ROSA BROOKS, *HOW EVERYTHING BECAME WAR AND THE MILITARY BECAME EVERYTHING: TALES FROM THE PENTAGON* (2016).

a very productive set of sessions in the next several days. I hope that in those sessions, you at least begin to address the many issues that Hilary, Christine, and Rosa have flagged and, perhaps equally important to clarify the misimpressions of international law that relatively lay people like me have and underscore its potential, to use the words from your pamphlet to “underscore its potential in balancing power through principles of justice quality and dignity.” Thank you.

Michael P. Scharf:

Thank you, Muhammad. I'm Michael Scharf, Former Dean of Case Western Reserve University School of Law, and the President of the American Branch of the International Law Association for the last two years. And every year, we kick off the event with the President's high-level plenary panel. We're glad to see this room filled to the brim because you are in for a treat this evening. So, as President, it is my privilege to chair this opening panel. It is titled 'Powerless Law, or Law for the Powerless: The Once and Future International Court of Justice.' This past year, the International Court of Justice has issued groundbreaking decisions relating to the Gaza conflict and the status of Palestine, and it is poised to decide the momentous question of legal responsibility for climate change. Making law for the powerless, these cases have engendered praise and criticism, concern, and, above all, worldwide scrutiny of the court's role and efficacy. In a roundtable format, the President's opening plenary panel will be a high-level discussion of contemporary issues related to the World Court. For this round table, we've assembled a stellar group of experts. Now, the thing about speakers of this distinction is that everyone knows them so well we can keep their introductions relatively short. So, let me now introduce the panelists in alphabetical order, starting with Lori Damrosch. Lori is the Hamilton Fish Professor of International Law and Diplomacy at Columbia Law School, and she has written numerous books and articles about the International Court of Justice. She has served as the president of the American Society of International Law and Co-editor-in-chief of the American Journal of International Law. Before joining Columbia, she practiced law with Sullivan and Cromwell and served in the Office of the Legal Advisor of the US Department of State.

Next to Lori is Harold Hongju Koh. He is the Sterling Professor of International Law and Former Dean of Yale Law School. He has served as Legal Adviser of the US Department of State, and as Assistant Secretary of State for Human Rights, Labor, and Democracy. Recently, Professor Koh represented Ukraine against Russia in three cases before the International Court of Justice and the Permanent Court of Arbitration. He has just published a new edition of his critically acclaimed book, *The National Security Constitution in the 21st Century*,⁸⁴ which will be the focus of a separate ILW panel.

Next, we have Sean Murphy. Sean is the Manatt/Ahn Professor of International Law at George Washington University Law School and a past president of the American Society of International Law. Sean has served as a member of the United Nations International Law Commission, as Legal Advisor to the U.S. Embassy in The Hague, and as Attorney-Advisor in the Office of the Legal Advisor of the U.S. Department of State. He has argued several cases before the International Court of Justice and the Iran-U.S. Claims Tribunal. He has frequently served as an arbitrator in interstate disputes and has even sat as an ad hoc judge on the International Tribunal for the Law of the Sea.

And finally, we have Nilüfer Oral. She's the Director of the Center for International Law at the National University of Singapore and a member of the United Nations International Law

⁸⁴ HAROLD HONGJU KOH, *THE NATIONAL SECURITY CONSTITUTION IN THE TWENTY-FIRST CENTURY* (2024).

Commission, where she serves as Co-Chair of its Study Group on sea level rise in relation to international law. She has served as a Legal Advisor to the Turkish Foreign Ministry for Law of the Sea and as a climate change negotiator. Now, I will conduct this panel the way I do my Talking Foreign Policy radio show. This round table panel ends at 7:15 PM sharp. The panelists will strive to keep their answers concise to ensure sufficient time for audience questions. Then, we invite you to proceed to the next room, where a wonderful reception is being hosted by my law school, Case Western Reserve.

Let's begin with the questions for the panelists. For the first question, let's talk for a moment about the composition of the International Court of Justice bench. The 15 ICJ judges are elected for terms of nine years on a staggered basis. Sean, there was a time when we would habitually see a judge from each of the permanent five countries on the court. Now, there is no Russian or UK judge. What are the implications of this development?

Sean D. Murphy:

Well, thank you, Michael, for the introduction and for the invitation to be here. It's a great pleasure, particularly to be with the other colleagues on the panel, whom I admire quite a bit. It is good to start with the judges when we think about the ICJ, it really is the judges who ultimately are the ones making the opinions that we read so closely. As many of you probably know, there is no requirement in the UN Charter or the statute of the ICJ that the judges include members coming from the permanent five countries. This is not like the UN Security Council; even so, historically, there have been five judges from those countries on the court with just three exceptions. The reason why they have been there probably has been a sense of there being value in having those countries engaged in the work of the court. There's also just the comparative advantage that the permanent five members have given that the judges are elected in a concurrent election - both the Security Council and the General Assembly have to elect these judges - so those who are permanently on the Security Council have a bit of an advantage there. The three exceptions have been: there was a gap in the period of 1967 to 1985 when there was no Chinese judge on the Court. That was the time when we saw a transition from the government of China being based in Taiwan to Beijing. So, it was a bit of an issue there. But the second exception was in 2017 when Judge Greenwood from the United Kingdom was not re-elected. People put that down to some extent, to the effects of Brexit and the effects of the movement toward an Advisory Opinion on the Chagos Archipelago. The General Assembly had asked the question of the court about that just six months before the ICJ election. In that context, it was somewhat interesting that the seat went to the Indian Judge Bhandari, which meant that you did not have five judges from the WEOG (the Western, European, and Other Group); you had four instead. And instead of three from Asia, you had four coming from Asia. So, it had a consequence in terms of the regional representation. And then the third phenomenon or exception was the failure to elect the Russian Judge Gevorgian in 2023, likely some blowback relating to Russia's actions in Ukraine. That particular seat stayed in Eastern Europe. Judge Aurescu is from Eastern Europe, so that didn't result in a regional reallocation.

But your question, Michael, was, what are the implications of this? I would say, as a first principle, we should be looking for highly talented people to serve as judges on the court. And if you follow that principle, there shouldn't be any particular implications; whether you're from a P5 country or not shouldn't matter. As a second principle, though, I do think it is worth paying attention to having judges on the court from countries that *do* have some significance for engaging in the work of international law and the work of the court. In that regard, I would note that switching from a UK judge to an Indian judge shouldn't make any difference. India is an incredibly important country, it's got the

greatest population of any country in the world. But not having a Chinese judge, if that were to happen, not having a US or UK Judge... I think there's a significance in that lack of involvement. But I'll say this, and this is my final point, given that we're on the radio, sort of, I do think that what's harmful to the court is if the voting for the judges is perceived as driven by global politics and not by the quality of the judges. And so, if Judge Greenwood was seen as less capable than Judge Bhandari, then so be it. If Judge Gevorgian was seen as less qualified than Judge Aurescu, then so be it if the chips fall where they will. But, if something else is going on here, if it's something other than having to do with the quality of those judges, then I think over time, it looks a bit politicized, and I think that's unfortunate for the court.

Michael P. Scharf:

I think that there's going to be a test of that in the next election because our colleague, Dapo Akande, who will be speaking as part of International Law Weekend, has publicly announced that he is going to be the British candidate to the International Court of Justice, so we'll see.

All right, this next question is for Harold. Let's discuss the ICJ's Advisory Opinions. Unlike the US federal courts, the ICJ can issue advisory opinions and judgments in contentious cases when it's requested to do so by an authorized international body. Within the last 30 years, advisory proceedings before the International Court of Justice have addressed some of the most controversial issues in international affairs, including the independence of Kosovo, the use of nuclear weapons, and the legality of the Israeli-West Bank barrier. The pace of requests for Advisory Opinions has been accelerating. Among ICJ cases that have been active this year is an Advisory Opinion case related to state obligations in respect of climate change, and there's another one dealing with the legal consequences of the policies and practices of Israel in the occupied Palestinian territory. So, Harold Koh, do you think the ICJ Advisory Opinion process is somehow out of control? We're being a little provocative here.

Harold Hongju Koh:

Well, I've been on two Advisory Opinion cases as counsel. One, the Kosovo Advisory Opinion, which I thought played an important and salutary role, and I'm currently counsel to the International Trade Unions in the right-to-strike case, which we hope will also lead to a useful result. So, I wouldn't say that I think the process is inherently out of control. I would say, though, that the Advisory Opinion process badly needs 21st-century management. So, in addition to the things that Sean mentioned, all of which are correct, it's not just the quality of the judges; it's the nature of the institution, and the ICJ has an incredibly antiquated opinion writing process. It's extremely cumbersome. It makes it difficult for the judges actually to talk to each other about outcomes. In recent years, we've lost some of the strongest judges, like James Crawford, who everybody knows. The questions put to Advisory Opinions are done in General Assembly Resolutions, which can be extremely slanted politically. Look at question one of the Palestinian Occupation Advisory Opinion, even if you agree with it, it wasn't worded in a way that you would expect in a normal legal question presented. There are too many oral arguments. The Palestinian Occupation case was six days, 52 presentations, many of them frankly repetitive. Of the others, there's, therefore, a lack of focus. And when you put it together with other phenomena that you'll mention here today, Michael, which is *erga omnes*, contentious cases, intervention processes leading to 30 or 40... What is very clear is that it's not dissimilar to when US federal courts suddenly realized they were dealing with aggregate litigation and didn't have adequate multi-district litigation or class action devices to manage it. They're just going to need to do a better job of managing

them, given that it used to be that being on the ICJ was a part-time job, and now they're being overwhelmed with work, and so they can't give all the cases equal attention.

Finally, and this goes to something that both you and Sean said, in Dapo Akande, whose candidacy was announced today, we have an extraordinary candidate, one of the best you could imagine. And I hope everybody here, whether you know him or not, learns about him and why he would be an extraordinary addition to the court. But now there is a 15 or 16-month campaign to get on the court. It involves hundreds of meetings, not just live in New York, but live in the Capitol and on Zoom. Many of these meetings are subtle requests for knowing the candidates' position on particular issues of concern to the government asking the questions, and it's just an inherently very political process. I think it's an incredible gauntlet to have to run. Not everybody who could be a candidate can spare 16 or 18 months running a campaign and do their own job. So, I think the Advisory Opinion process badly needs rethinking at an institutional level, with these differences and exigencies in mind.

Michael P. Scharf:

Oh, I asked a provocative question. I got a provocative answer. I don't want to just let it sit out there - are any other panelists interested in weighing in? Lori?

Lori Damrosch:

I'll weigh in on the questions that you're going to put to me later.

Michael P. Scharf:

Sean or Nilüfer?

Sean D. Murphy:

Well, I'll just throw out another issue that I don't think Harold touched on: for some people, the Advisory Opinions sometimes are contentious cases in disguise. And because there's no jurisdiction in the contentious case, it goes into the Advisory Opinion process instead. So, you certainly saw those arguments in the Kosovo Advisory Opinion, and I'll disclose I represented Kosovo in that case, that it really was a Serbia versus Kosovo dispute that should have been considered that, and not an advisory opinion. Same with the Israeli Wall and the recent Palestinian Advisory Opinion, it's really Israel versus Palestine. The arguments were also made in the context of the Chagos Advisory Opinion. It's really UK/Mauritius. Personally, I think those arguments aren't particularly strong, because actually, if you're not a member state of the UN and you're not a party to the ICJ statute, you can't be sued or sued before the ICJ; therefore, it's not really diverting it into an advisory opinion process. The Chagos issue: Clearly, decolonization is something this General Assembly has cared about for decades and still cares about. Still, I raised that issue because it's entirely possible you could have a situation where there is jurisdiction between two States, it still goes into an Advisory Opinion process, and that's where I think the issue really comes to the fore. We might see that at some point.

Michael P. Scharf:

And just as an aside, Harold, you are a lawyer in a pending Advisory Opinion case on the right to strike. Why is that case important?

Harold Hongju Koh:

Well, that's a great advisory opinion case, for a couple of reasons. First of all, Sean is absolutely correct. There is no claim that the idea that in the ILO Convention 87, which has 158 States Parties, there is a

right to strike which was originally there at the ratification of the treaty. That's not a bilateral issue in disguise, a contentious case should address that. And in the Chagos case, Joan Donahue, then the President, flagged this as a source of concern. So that's not a concern here. Secondly, this is an Advisory Opinion coming from a specialized UN agency, which is entitled to request it. Third, it is the first advisory request coming from the ILO to the International Court of Justice. Three prior requests were made to the Permanent Court of International Justice, all of which ruled in favor of broad freedom of association, extension of the jurisdiction of the conventions to various forms of labor, like agriculture and other kinds of things. So, what had happened here was an essentially universal consensus that ILO Convention 87 about freedom of association protected the rights of unions to strike, and that was shared by the tripartite group, the employers, the unions, and the States. And then in 2012, after over 100 years, the employers suddenly switched positions and said: 'No, no. In fact, it doesn't cover a right to strike.' And started to walk out of the ILO Council and do other kinds of things until it got to the point that they couldn't do business in the ILO.

Finally, the employees' unions and the States decided to refer this to the ICJ for an Advisory Opinion. And the way the question is worded, is there a right to strike? All they're looking for is the answer: yes. There always has been. Interestingly, of the 30 participants in the process, only four had said that, for some reason, there wasn't a right to strike. One of them was the UK that brief was a memorial filed by the Rishi Sunak government, and then Keir Starmer's government, called Labour, got elected, and they withdrew it. And then, of course, the Joe Biden administration. Joe Biden walked on a picket line, so it would be quite unusual for him to say there was no right to strike. Part of the thinking in this is that the court now has very difficult Advisory Opinions. This is an easy one. All it has to do is say, yes, it was a settled issue before the disruption in 2012. Answer the question: yes, there's a right to strike. Then, there may not be another ILO case for the next 100 years. But I will point out this, and I think Sean would agree with this. Increasingly, there is briefing in ICJ memorials on Advisory Opinions about why the Advisory Opinion is admissible, because not every case is suited to be treated as an Advisory Opinion, and probably this court, after being overwhelmed with requests, will come up with some kind of Alexander Bickel-ian type jurisprudence about when these cases should not be reviewed on the merits in the name of certain passive virtues.

Michael P. Scharf:

We'll keep our eye out for the result in that case. Let me turn back to Nilüfer. Small Island States have initiated two Advisory Opinions in relation to climate change. In the recent ITLOS Advisory Opinion - the Law of the Sea Tribunal - brought by the Commission on Small Island States (COSIS), over 30 states filed written statements. In the pending request before the International Court of Justice, which was initiated by Vanuatu, a record-breaking 90 written statements were filed in the first round and over 60 in the second round. So Nilüfer, do you believe this reflects trust in the court or frustration with the political process on the part of the less powerful States?

Nilüfer Oral:

Thank you so much, Michael, for the question. I must say how wonderful it is to be here with such a distinguished panel and a wonderful audience on these very topical and important questions that you are asking us. So, indeed, frustration or trust? I would answer both. So, first of all, when we look at the plight of the small island states and climate change, it starts many decades ago. In fact, climate change was first recognized as a common concern of humankind by an initiative by a small island state, Malta, in the General Assembly 1988. 1989 - The Malé Declaration by small island states warning about global warming and sea level rise. 1990 started the first IPCC reports. Finally, we get the

UNFCCC, the Framework Convention on Climate Change. Still, the political process has not really answered or responded adequately to the needs of the small island states, whether it be sea level rise, which is obviously the topic we're taking up in the International Law Commission, whether it be the other impacts of climate change, which are multiple, and also the needs of adaptation, we know the very controversial yet extremely important issue of loss and damage. I myself participated between 2009 and 2016 in the Climate Change Conferences. And I can see the frustration. There's just nothing. There's a lot of talk, there's a lot of paper, but the small island states are still in a very adverse position, worsening. So clearly, there's frustration, but to me, what's remarkable is that they have looked to the courts, to international law. It's not just simply the courts; it's a trust in international law, where I see the other form as a political form, more than a law-making form, frankly.

They have gone to the courts, and perhaps as well, we can see that we mentioned the Chagos Advisory Opinion, and I'm sure that had a positive influence as well. What is important is that it's not just the small island states, but this was a case initiated by law students in Vanuatu. It's young law students who have, apparently, trust that the World Court, the ICJ, in the current law. But also, ITLOS was the Commission on Small Island States – and, I have to say, I'm a member of the expert committee – there was a group of small island states who were so frustrated by the political system in the UNFCCC. I think the outcome of that advisory opinion shows that they were right to trust ITLOS. That was a very powerful opinion. It's an opinion, it's an interpretation, but it will have an impact. It has officially recognized greenhouse gas emissions as pollution. That means that many obligations and requirements will be triggered. That didn't come out of the political process, but it has come out of the court. There's much more to it. I won't summarize the whole case, so I would say frustration and trust.

Michael P. Scharf:

How many of you out there are law students? Raise your hand. Okay, that's fantastic. Did you know that your fellow law students brought this important case? That's amazing.

Let's talk about the court's contentious jurisdiction concerning a spate of cases recently brought under the compromissory clause of the Genocide Convention. So, for some history, I'd like to turn to Lori. Lori, you first started studying the ICJ and the Genocide Convention back when the Cold War was the overriding feature of international politics. In the big picture, what are the main changes over time?

Lori Damrosch:

Thank you very much Michael, and the reason that I didn't take you up on your invitation to answer the other questions is, first, I largely agreed with what the previous ones have said. And second, I may have a little more to share that I hope to put out there for all of you. So, the Genocide Convention was opened for signature and ratification in 1948. And at that time, it was the beginning of the Cold War, and the Soviet Union and Soviet bloc states were pretty hostile toward compulsory International Dispute Settlement. They thought that these new institutions, in some sense, is continuous from the League of Nations period, but being revived for the new era, would be biased in favor of the West and would be hostile toward the Soviet Union. So, the Soviet Union joined the Genocide Convention, as did all of the Warsaw Pact states, but they did so with reservations addressed to the dispute settlement clause. And for those of you who are law students, if you have studied reservations to multilateral treaties, probably the first thing that you read is a 1951 Advisory Opinion of the ICJ. Now, this is a good use of the advisory opinion to get legal advice on a question that was new: can states make reservations to dispute settlement clauses in a multilateral treaty? And the court answered that question, saying as long as the object and purpose of the Convention, which is a humanitarian and

civilizing purpose, is not impaired, then reservations could be permissible. And on that basis, the Soviet Union and the Soviet bloc States remained with these reservations for quite a long time. Now, the United States was a latecomer, and when it joined the convention in 1989, guess what? It followed the example of the Soviet Union and put in a dispute settlement clause, as well as other debilitating conditions to ratification. That was in 1989, but good things started happening for international law as the Cold War was ending. One of the good things was that the Soviet Union and the states of the former Warsaw Pact thought that they could enhance their reputation by accepting not only the verbal, and rhetorical commitments of these human rights treaties, but also by accepting these institutional features, including dispute settlements.

So, the Soviet Union withdrew its reservation, which meant that when the Soviet Union dissolved and Russia became the continuing state, it had no reservation to the dispute settlement clause under this treaty, and the same became true - Ukraine and Belarus had sort of special status in the period that we're talking about. However, all of the successor states of the former Soviet Union, who had become newly independent or had reclaimed their independence, all joined the Genocide Convention without any of these reservations. So that's one big-picture change. What hasn't changed, of course, is that the United States and certain others are still clinging to this reservation to dispute settlement. Now, in parallel, we had other human rights treaties with similar reservations, and the Soviet Union and Soviet bloc states also withdrew their reservations, for example, to the dispute settlement clause of the Convention on the Elimination of Racial Discrimination. And so, because of the withdrawal of these reservations, you can see that Ukraine can sue the Russian Federation. Georgia can sue the Russian Federation. Both cases could only exist because of the withdrawal of these reservations under the Convention on the Elimination of Racial Discrimination - that's the Georgian case, Ukraine versus Russia - had both race discrimination and genocide contentious cases, and then under the Racial Discrimination Convention, we have Armenia and Azerbaijan having sued each other, both under that Convention and that case, after going through provisional measures and various preliminary objections is now fully heard and poised for decision. So that's the overall picture of the legal landscape under the Genocide Convention.

Michael P. Scharf:

Let me ask you a follow-up. So, I think you explained why the Soviet former republics are now open for business under the Genocide Convention. Is that the only reason why we are seeing so many more cases now than in the past? Or is there other things going on as well?

Lori Damrosch:

Yes, I think that other things are going on. And I also want to say that even though all of these reservations were withdrawn, it took a long time for any cases to get there. We had Bosnia-Herzegovina suing the Federal Republic of Yugoslavia, later Serbia, and we had Croatia suing Serbia. So, you had those two cases under the Genocide Convention in the 90s, but you did not have a huge number of genocide cases being brought, nor under the CERD,⁸⁵ nor under the Convention Against Torture, and all of a sudden, now in the 21st century, we're getting them. And I have to say, just putting on my hat of the 1990s, in the early 1990s, Human Rights Watch approached me and said, 'There's really interesting stuff in all of the documents of the Saddam Hussein regime that show that genocide had been committed against the Kurds of Iraq in the last days of the Iran-Iraq War. Do you think that we could find a state party to the Genocide Convention that might be willing to bring a

⁸⁵ International Convention on the Elimination of All Forms of Racial Discrimination 1965.

claim against Iraq under that treaty?’ And I said, ‘Well, I could write a legal memo on that.’ And 30 years later, my legal arguments are finally being vindicated, but we did write a legal memo, Human Rights Watch and several experts on the ICJ consulted with many, many governments; I won’t say how many, but it was several dozen, and it includes several of the states that now are eagerly supporting human rights cases. And we could not find in the 1990s a *single* state that was willing to go out on a limb and say, ‘we’re prepared to bring a case against Iraq under the Genocide Convention.’

I think that some of the factors that have changed include the legal landscape that I’ve tried to chart, both the withdrawal of the reservations and also the endorsement by the court itself in a notable case from 2012 which Belgium brought against Senegal under the Torture Convention, in which the ICJ said that every State Party to the Torture Convention has an interest in its enforcement, and therefore can have standing to bring such a claim under the Latin term *erga omnes partes* on the obligations are owed toward all the parties to the treaty. Every state party to the treaty has a legal interest in its fulfillment. So, with that case having been brought by Belgium against Senegal, involving the efforts to hold accountable the former dictator of Chad, who was then in residence in Senegal. And that opened a door, and now many more States are walking through that door. So, The Gambia, on a similar theory of *erga omnes partes*, brought suit against Myanmar under the Genocide Convention, and the court, in a 2022 ruling that’s really quite pathbreaking, fully endorsed this idea of *erga omnes partes*. So the other factors are more political, and I think that they do bear on some of the considerations that my colleagues on the panel brought up earlier, it just has to do with growing in confidence that the court can be fair in these cases and also that powerless states, or relatively powerless states, not only will get a fair hearing, but that they’ll draw attention to a very valid, very worthy cause, and can do so through the initiation of such suits, and they wouldn’t do so if they didn’t think that they would be vindicated in the court of public opinion, even if their adversary may flout the judgment later on.

Harold Hongju Koh:

I agree with what Lori says, but two quick points. One reason for more cases is just that some States are ready now to fight and litigate at the same time, which sometimes didn’t used to be the case. The US contested jurisdiction in the Nicaragua contentious case, and lost, and then it walked. But we now have a situation where Russia is both daily using military force in and against Ukraine and litigating at the ICJ, the Permanent Court of Arbitration, and the Law of the Sea tribunal. Their lawyers quit, so they hired new lawyers, and you can imagine the kind of argument those guys are making. But Iran, for example, is amazingly litigious with regard... they filed affirmative suits against Canada about their immunity laws, et cetera, even while they are obviously actively supporting various forms of militias. So, I think that this creates some severe complications. One, what do you do when the president of the ICJ is from Lebanon, and Israel is firing bombs into Lebanon? Does that create a complication in terms of whether people think that that judge is fair? In South Africa, they claim to be an *erga omnes* representative because they analogize their situation to apartheid, as they feel that the Palestinians are experiencing. But then, when Bashir comes to South Africa subject to an ICC arrest warrant, they don’t arrest him. So, it may well be that the *erga omnes* test is not giving enough of a texture, requiring some consistency of behavior in these cases, and I think that that’s something that the court should be looking out for, as well as those of us who are discerning international lawyers.

Lori Damrosch:

I agree with some of what Harold said, but there’s enough disagreement there. I think we don’t know yet what pleadings will be coming to the ICJ that may raise questions about whether a judge from

Lebanon can fairly preside over the case. But I have to say, that we have had presidents of the court who are also coming from States that are litigants before the court, and they take the appropriate decisions, or they have, or they could, and I don't think there's any reason to predict in advance that a certain judge might have his or her objectivity questioned and wouldn't know how to deal with a challenge of that sort if it came. For my own part, I would like to indulge the presumption that the members of the court are well qualified and capable of acting independently and impartially and capable of taking the appropriate decisions if there's some reason why they should not exercise certain functions, whether of a judge or of a president or of a vice president, as the case may be in a particular case. So, I have to stand up for the honor of the court, because I really think it's a mistake for lawyers or law students to start with an assumption that a judge is going to be biased. We saw that with the South China Sea, and we've seen it with attacks that come from people who are not knowledgeable about the court.

Harold Hongju Koh:

Come on, Lori. Obviously, there are some judges who are scrupulously fair, and there are some judges from certain countries who have traditionally not been impartial. And I think everybody knows that. Everybody who appears before the court knows that. And there is not a good process for fleshing out bases for recusal when someone's impartial. But by the way, we don't have a particularly good process at the US Supreme Court either, as you may have noticed. But what it does do in both cases is to cast doubt on the impartiality of rulings. And I think that that's an unfortunate situation. I'm not saying that students should start with a presumption that a judge is biased, but I think they should also ask; sometimes, it may be that a judge decides that they're not the appropriate person to sit in a particular case because of the appearance of impropriety, which is what judges are supposed to do in courts everywhere.

Michael P. Scharf:

All right, so that issue aside, what you were saying, Lori, about all these new cases, starting with the torture case: to understand how radically different that is than the old precedent at the ICJ, I want to ask Sean a follow up: Sean in the South West Africa cases, back in 1966 the ICJ said: an *actio popularis* (or right of a resident in any member of a community to take legal action in vindication of public interest) is not known to international law as it stands at present. So, in light of the recent ICJ jurisprudence, Sean, would you say that that statement is no longer a true statement, or is there a way to distinguish it somehow?

Sean D. Murphy:

Well, first of all, I feel like we should have more sparks going on this side of the we're letting you down a little bit, maybe so just to remind folks, particularly the students maybe aren't overly familiar with the South West Africa cases, but they were decided in 1966 and what that involved was two countries, Ethiopia and Liberia, bringing a case against South Africa, which was the sort of trustee for South West Africa. It's now, of course, Angola. Still, at that time, it was under the mandate left over from the League of Nations, where South Africa is supposed to be looking out for South West Africa. Yet, it appeared South Africa was implementing measures that looked a lot like apartheid in South West Africa. So, Liberia and Ethiopia bring cases against South Africa and is confronted with a South African argument that they don't have essentially any standing - there are not nationals from their countries who are being harmed by this. The court in a very close vote, in fact, it was a tie vote that the President had to resolve by voting twice, decided that, in fact, South Africa was right. These two

countries did not have standing to bring the case. And that's where this *actio popularis* quote you gave us, Michael, came from.

The court was highly criticized, even at that time, for the decision, and I think over time, the feeling has been it was a bad decision, and even then, it was a close decision. So why was the court in that place? Well, I think it's still relatively early in the life of the court. You've got a strong sense of state sovereignty operating. The human rights movement hadn't fully flowered at that point, and I think the court was just being very cautious about how it proceeded. So, to answer your question, no, I think it's in a very different place today. I think the court is now much more open to at least the concept of *erga omnes partes* cases, meaning cases like Lori was talking about, where you've got two countries that are both parties to a particular convention, and one is suing the other, even though the one that's bringing the case isn't being directly harmed. I think we are seeing the court very open to those types of cases, at least when it comes to something like the Genocide Convention. Maybe I'll give you a little quote of my own. This one's from the Gambia versus Myanmar case that Lori, I think, alluded to. The court said "all the states parties to the Genocide Convention have a common interest to ensure the prevention, suppression and punishment of genocide by committing themselves to fulfilling the obligations in the convention."⁸⁶ Such a common interest implies that the obligations in question are owed by any state party to all other States Parties to the relevant convention. They are obligations *erga omnes partes*, in the sense that each state party has an interest in compliance with them in any given case. And from that flowed the idea that you could, in fact, have the Gambia bring a case against Myanmar, even though there are not Gambian nationals being harmed in the context of the alleged genocide against the Rohingya. So, it seems like this issue of do they have an interest? Is being answered yes, in the context of a multilateral treaty where a claim is being brought. What we don't know yet is the breadth of that. I think it's certainly true for the Genocide Convention. It certainly seems to be true for the Torture Convention, as Lori mentioned in the Belgium-Senegal case, that was in play. And so, these core multilateral human rights treaties, it may well be the case that this *erga omnes partes* thing is operating.

Michael P. Scharf:

Let me ask you Sean, or Nilüfer, do you think that the Law of the Sea Treaty, could be subject to *erga omnes partes* litigation?

Sean D. Murphy:

I feel we have to disagree on this to get those sparks going (laughs).

But it's a great question. The core human rights treaties seem to me, certainly, but not as obvious other treaties where there's a common interest, certainly when you get the Law of the Sea Convention on the High Seas, you've got a common interest. Antarctic Treaty, Outer Space Treaties, maybe it expands to cover that. Does it expand to cover all multilateral treaties? Not obvious to me, at least. When you think about the Barcelona traction, where this idea of *erga omnes obligations* was sort of birthed, the court seemed to be saying, trade, investment, those kinds of things aren't in play. It's these more aggression, genocide, and whatnot. So, a distinction is certainly being made. And I don't think we know exactly where the line is being drawn.

⁸⁶ Order of 26 January 2024, INTERNATIONAL COURT OF JUSTICE DOC. 192-20240126-ORD-01-00-EN.

Michael P. Scharf:

Lori, what do you think about the Law of the Sea Convention?

Lori Damrosch:

I'm sorry for no sparks, because I think I agree with Sean. First of all, of course, UNCLOS is a big convention, over 300 articles, but it would be more in those concerned protection of the environment in particular, and they're the high seas. And ITLOS has already said that protection and preservation marine environment is an obligation *erga omnes*. And we actually saw that, although never mentioned, in the South China Sea case, which was very interesting. So, I would say that for the for the Law of the Sea Convention, it depends which part, not all of it, of course.

Michael P. Scharf:

Let me go back to Harold. Harold, you mentioned the Ukraine case against Russia and the Genocide Convention. What do you think is the best that Ukraine could hope to achieve out of the merits in the proceedings in the upcoming Genocide Convention case?

Harold Hongju Koh:

Let me just preface my remarks by saying that I've known Lori for 40 years. She first met my brother 54 years ago, so I think that our relationship will survive this point of agreement. (Lori and Harold laugh). But the important thing about the genocide allegations case, and this is a warning to the students, the international law blogs and Twitter are great if you read the opinion and see whether you agree with what the blogs have to say. And I don't think there's any case in which I've read more bad blogging and more bad X or Twitter or whatever. Literally, people were so determined to get out their instant analysis that they missed many of the key holdings in the court's ruling. But first of all, the prime accomplishment of the genocide allegations case is that people thought that the only way a state could sue another state was if that state committed genocide. And it turns out that what Russia is very good at doing is claiming that other states have, falsely, committed genocide as a basis for invasion and as justifying naked aggression and then atrocities. And so, one of the things we said is this is a question of interpretation and application of the Genocide Convention that would allow neighboring states to bring these claims, and that if they couldn't bring these claims, then they would be next. Because if Russia can use false claims against Ukraine, calling them Neo Nazis, etc., to invade and engage in a massive, multiyear war causing billions of dollars of destruction, Poland is next, Moldova is next. And indeed, this is not a legal point. This is the exact point that Kamala Harris made to Trump in the debate, which he appeared not to understand.

Now, the way that the court recognizes these other interests is by allowing intervention under Articles 62 and 63 of the statute of the ICJ. And those distinguish between those issues in which there's an interest of a legal nature, which is what Poland has invoked as a basis for intervening on the merits. And then 31 other countries have invoked Article 63 intervention, which means that they are parties to the same convention, so they have an interest in the part in the convention not being wildly misconstrued. So we also have a situation in which the court, by a vote of 12 to three, issued a provisional measures order less than a month after the invasion began in March 2022, where they said that Russia should remove its troops and paramilitaries from the territory of Ukraine. They have been in blatant violation of that ever since. Now, in the most recent decision, Ukraine versus Russia on the financing of terrorism and the racial discrimination case, they said that violations of the provisional measures order end up being compensable, whether or not they end up finding a ruling in favor of

them on the merits. So, when you add it all up, what the answer to your question, Michael is obviously declaratory relief and orders of non-repetition.

But, there is a very strong claim of reparations, because they've been in blatant violation of these orders. And there are 365 billion Euros in Frozen Russian assets. And right now, those are subject nominally to the idea that they're in the title of the Russian Federation. The allied governments and many European countries have been hesitant about allowing these assets to be seized because of their concerns about the overuse of countermeasures or sovereign immunity. And when you think about it, how comical is it that they believe that Putin, having so blatantly violated the sovereignty of his neighbors, is allowed to invoke sovereign immunity as a basis for not being able to pursue his assets? What everybody agrees, though, is that the strongest case for post-judgment execution and attachment is based on a merits ruling of the ICJ. And so that's there. The Europeans have just started to under pressure from the Secretary of the Treasury, Yellen and others, open the door for some of those assets and the interest on those assets to be turned over to the Ukrainians as a basis for reconstruction. This is a long struggle, but the whole point of legal argument is to change people's notion of the legitimacy of certain kinds of claims of political and economic necessity, which are clearly being made here.

Michael P. Scharf:

So sometimes we wonder about the effectiveness of the ICJ decisions, and you are explaining how there is a really concrete potential effect in terms of this huge amount of frozen assets. I want to turn to Sean about provisional measures because Harold also mentioned the use of provisional measures. And for you law students, it's like a TRO in US jurisprudence. Sean, we sometimes see more than one country at a time asking for provisional measures. Is the court well-positioned to issue such orders?

Sean D. Murphy:

We are seeing a lot more requests for provisional measures from the court. In fact, I looked back at the basic numbers in the first 50 years of the court's existence. That's up until 1996 with the *Breard* case;⁸⁷ the court was deciding requests in just 19 cases. That's roughly point four cases per year. In the ensuing years, 1996 to the present, you've had those requests made in 39 cases, which is about 1.4 cases per year. And if we take just since 2020, the past four years, the court has decided requests in 10 cases, that's 2.5 cases per year. You're seeing it increase, not exponentially, but increase significantly in recent years. Moreover, within cases, you're seeing multiple requests being made. Harold was not talking about the South Africa-Israel case, but just this year, we've had Provisional Measure requests in January, March, and May decided. And in the Azerbaijan-Armenia cases, again, I'll divulge I'm a counsel, requests in just the Armenia versus Azerbaijan case being decided in December of 21, October of 22, February of 23, July of 23, and November of 23. So, we are seeing a huge increase. And this goes to your question: is the court well positioned to decide this? So far, I think it is coping, but it's putting a pretty big stress on the court.

Under the court's rules, Article 74(1), they have to decide a request for the indication of provisional measures with priority over all other measures. So basically, they have to push aside what they're doing and schedule a hearing and get everybody into The Hague within a matter of two or three weeks, and then issue the order, which sometimes can be quite long. We are seeing that happening quite a bit, and it is imposing a burden on the court, but they're coping. Moreover, they took a decision in 2020...

⁸⁷ *Summaries of the Decisions – Vienna Conventions on Consular Relations (Paraguay v. United States of America) (1988)*, World Court Digest, https://www.mpil.de/de/pub/publikationen/archiv/world-court-digest.cfm?fuseaction_wcd=aktdat&aktdat=dec0308.cfm (last visited May 6, 2025).

they adopted a new article in what's called the Resolution Concerning the Internal Judicial Practice of the Court⁸⁸ where they are now, within the court, establishing an ad hoc committee that looks at these provisional measures orders that have been issued and looks at reports that have been requested from the states who the measures are against. The committee is supposed to examine the information and report periodically to the court about whether or not there's compliance and to recommend potential options if there's an issue. Of course, the court as a whole has to make the decision, but that, too, is a bit of a burden on the court. So yes, I think the court is coping, but I think it's pushing their limits a little bit.

Michael P. Scharf:

So, these modern genocide cases have not yet fully gone to the merits. We've seen these provisional measures decisions, though. I want to go back to Lori and ask if those provisional measures decisions have had any effects in terms of changing the behavior in ongoing armed conflicts?

Lori Damrosch:

I want to say that the short answer will be a qualified no, because if you look at the notorious cases, and I'll start with one that's not a Genocide Convention case. Still, it's the case that Nicaragua brought against the United States in 1984, alleging violations of the customary international law prohibition on the use of force. There was a provisional measures order, and the United States said that we are paying no attention to this. And then there was a final judgment. And with the final judgment, on the very day that the judgment came down, Congress approved something like \$100 million for the very program that the court had ruled to be unlawful. So, that's not a Genocide Convention case. But then when you look at the ones from the 1990s, the Yugoslavia cases with Bosnia versus Serbia. There were provisional measures there. Did it affect the conflict? No. And the case went on for 14 years before there finally was a judgment, and you'd be hard-pressed, I think, to discern any real-world effects from provisional measures. So, when we get to the current period, and we have both the Ukraine versus Russia, and now South Africa versus Israel, with sort of escalating series, as Sean has pointed out... what I want to say is it's not just a flat out no, but a qualified doubt.

What's the best case that you can make that there's been some effect somehow? First of all, I do agree with my learned colleague here, Harold. We've been twinned for so long. How can we disagree on anything? I do agree that even a provisional measures order lays the groundwork for other states to take sanctions of some sort, and lays the groundwork eventually for reparations being awarded and enforced later on. That's why it's not a flat out no that Russia is totally disregarding this because it could have some effects, among other things, on third-state behavior in respect of their willingness to freeze assets, or maybe eventually apply them, as we're seeing creative efforts to do.

South Africa versus Israel is a more complicated case, with these multiple orders coming down in succession, three in the first few months of this year. And I want to say there's a possible mixed picture here. I mean, if what we see is, has Israel changed its military strategy in the big picture? The answer, most likely, is no, but I think there is some incremental effect that comes from the discipline of having lawyers go to the court and say, here's what we are doing. Here are the ways in which we are trying to minimize casualties, or we are trying to ensure delivery of humanitarian aid. And I know it's going to be a difficult sell, but I think it's more than negligible effect that comes from that legal requirement to make those statements in court and to be held to account for complying with them.

⁸⁸ RESOLUTION CONCERNING THE INTERNAL JUDICIAL PRACTICE OF THE COURT (Rules of Court, Article 19) (Apr. 12, 1976) INTERNATIONAL COURT OF JUSTICE.

Michael P. Scharf:

Harold, what did you want to add to that?

Harold Hongju Koh:

Two quick points. When we won the provisional measures order for Ukraine in the genocide allegations case, I got a call from an American reporter whose first question to me is, isn't this a meaningless ruling? Because the ICJ can't enforce its own rulings? And I said, Excuse me, no court anywhere in the world can enforce its own rulings. Did you ever read a case called *Marbury versus Madison*? You know, it's the province and duty of the judicial department to say what the law is, and then once it says that certain actions are illegal, everybody is then authorized to enforce it and to isolate the legal violator. I said, Do you believe that what the Russians are doing is illegal? And he said, Yes. And I said, How do you know? And he said, Well, there's the resolution the General Assembly, and there's all this other stuff. And they finally said, There's this order of the International Court of Justice. So, in other words, it is a declaration of a norm, but it's a form of complex enforcement, not simple enforcement, as you have in a domestic system.

When Lori mentioned Daniel Patrick Moynihan, former senator, embodies compliance with the provisional measures order into a US statute, and the lawyer for the US for Nicaragua, said we just got our provisional measures from Congress. So that's one way that it can happen. However, the other aspect of this, which I think was just referred to by Sean, is that it places a burden on the court to be even-handed. Suppose they're issuing three consecutive provisional measures orders against Israel, and they're ignoring blatant violations of provisional measures orders by Russia. Are they actually fulfilling their role in issuing these provisional measures orders? Now they have this committee. Nobody has actually seen what the outcome of this committee is. But you all know from taking first-year civil procedure that when a court issues a structural injunction to a prison or a school system or a hospital that's unconstitutional, it then bears the burden of trying to monitor whether it's actually meeting those standards. And when it does that, people start saying that the court is exceeding its assigned role in a system of governance. So, I think that is the complication.

Michael P. Scharf:

Okay, I'm going to use that as a segue to our last question for a panelist, and then we're going to open it up for about 20 minutes for audience Q&A. My last question is for Nilüfer. Let's discuss the big picture as it relates to the theme of International Law Weekend. So has the ICJ become the form for the powerless, as demonstrated by the surge in cases including filing of interventions by states, by the less powerless states against the powerful? For example, Ukraine. The Gambia for the Rohingya and Palestine. So Nilüfer, what does this mean for the future of the ICJ?

Nilüfer Oral:

Thank you, and thank you for giving me the last question. I should say that I have the great privilege of living and working in Singapore. And Singapore is a very small state. And Lucy Reed is here, and she knows, it's a very small state. And they will always say that for them, international law as a small state is absolutely existential, and it stems from the notion the absolutely essential principle of the sovereign equality of states. But we know in reality, in certain form, that isn't always the case in the UN Security Council. I think what we see, and a professor, Douglas Guilfoyle, has actually written

about this recently,⁸⁹ about small statecraft and litigation and going to the courts. In his case, he was looking specifically at ITLOS. It is clear that the number of cases that have been going to the ICJ, but also ITLOS as well, because the Commission on Small Island States brought their Advisory Opinion. But we also know that other states have used ITLOS to bring their grievances. So absolutely, the International Court of Justice. And again, we go back to it's not the only one, but it certainly is an important one, Chagos. But many other cases now where I think going back, and I also agree with Lori, the integrity of the judges, and that is why they're going to a court, an international court where the sovereign equality of states, where the defendants on both sides, will be respected.

I think it is an absolute reflection that the small states are looking to the International Court of Justice, and also other courts as well and tribunals to assert claims that otherwise, going back to the issue between international law and international political fora, that they would not be able to have the same equality of voice of influence. However, having said that, I will say this, though. I would like to see that the representation of small states and the less powerful states also be by counsel from those states. And this is why I'm going to add something about advisory opinions. There is an important... what we've seen through the advisory opinions and also through the interventions, and as we said, 60, whether it be an ITLOS... then it was about 30 states. We'll see probably, I don't know how many in the advisory opinion that's before the ICJ, but it has really opened up for representation before the ICJ, before international tribunals, for others. Not everyone has the great opportunity and privilege to go before the ICJ, but it has given that opportunity. So, I see that as something very positive. It's not just small states taking their claims, but also the less powerful states and their counsel having an opportunity as well.

Michael P. Scharf:

Thank you. That was a wonderful way to conclude the panel.

⁸⁹ Douglas Guilfoyle, *Small states, legal statecraft and opening submissions in the ITLOS climate change advisory proceedings*, EJIL:Talk! (Sept. 18, 2023), <https://www.ejiltalk.org/small-states-legal-statecraft-and-opening-submissions-in-the-itlos-climate-change-advisory-proceedings> (last visited May 6, 2025).

**PART III – AMERICAN
BRANCH COMMITTEES**

COMMITTEES OF THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION

One of the unique features of the International Law Association, including its national branches, is the work of its Committees. Currently, the American Branch has twenty Committees headed by a Chair or Co-Chairs.

Although the American Branch as a whole does not take positions on current international law issues, the Branch's Committees may. Committee projects are diverse, ranging from multi-year academic studies to shorter academic analyses to advocacy work. The work of the branch Committees is overseen by the Co-Directors of Studies, currently Mortimer Sellers and Milena Sterio.

ARMS CONTROL AND DISARMAMENT

Chair: Luis Fortuño

FORMATION OF RULES OF CUSTOMARY INTERNATIONAL LAW

Chair: Brian Lepard

GLOBAL HEALTH LAW

Chair: Ana Santos Rutschman

INTERNATIONAL ARBITRATION

Chairs: Floriane Lavaud
Daniel Reich

INTERNATIONAL COMMERCIAL LAW

Chair: Irene Calboli

INTERNATIONAL CRIMINAL COURT

Chairs: Patrick Keenan
Jennifer Trahan

INTERNATIONAL HUMANITARIAN LAW

Chairs: Gabor Rona
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INTERNATIONAL LAW IN DOMESTIC COURTS

Chairs: Martin Flaherty
Steven Schneebaum

LAW OF THE SEA

Chair: Coalter Lathrop

LEGITIMACY AND FUNDAMENTAL PRINCIPLES OF INTERNATIONAL LAW

Chair: Mortimer Sellers

SPACE LAW

Chairs: Henry Hertzfeld
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TEACHING INTERNATIONAL LAW

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UNITED NATIONS LAW

Chairs: Christiane Ahlborn
Michael J. Moffat

USE OF FORCE

Chair: Jack M. Beard

**STUDY GROUP ON THE NEGOTIATION OF A CRIMES AGAINST HUMANITY
TREATY**

Chair: Leila Nadya Sadat

REPORTS OF THE DIRECTORS OF STUDIES 2020 THROUGH 2024

2020 REPORT OF THE DIRECTORS OF STUDIES JENNIFER TRAHAN AND PETER K. YU

Committee on Arms Control and Disarmament

Committee Chair: Prof. Christopher Borgen (St. John's University School of Law)

This Committee, which has been dormant for the past few years, welcomes Christopher Borgen as its new Chair.

The Committee will sponsor a panel at International Law Weekend 2020 entitled "Weaponry, Technology, Uncertainty, and Regulation." The panel will feature William Boothby, Honorary Professor, Australian National University and Air Commodore (retired), Royal Air Force; Dr. Heather Harrison Dinniss, Senior Lecturer, Centre for International and Operational Law, Swedish Defense University; and Dr. Laura Grego, Senior Scientist, Global Security Program, Union of Concerned Scientists. Committee Chair Christopher Borgen will moderate.

Committee on the Formation of Rules of Customary International Law

Committee Chair: Prof. Brian Lepard (University of Nebraska College of Law)

This Committee sponsored a panel at International Law Weekend 2019 entitled "At a Crossroads: Can Customary International Law Provide a Stabilizing Influence in a Fractious World?" The panel examined the challenges posed by rising nationalism and factionalism to the ability of customary international law to generate consensus-based norms that can effectively regulate politically charged problems such as the use of outer space, international investment, and human rights. It explored whether customary international law can meet this challenge and how it can provide a stabilizing influence in a fractious world.

The panelists included Frans G. von der Dunk, Harvey and Susan Perlman Alumni/Othmer Professor of Space Law, University of Nebraska College of Law; Mélida N. Hodgson, Partner, Jenner & Block LLP; Jocelyn Getgen Kestenbaum, Assistant Professor of Clinical Law, Benjamin N. Cardozo School of Law, Yeshiva University; Panos Merkouris, Professor of Public International Law, University of Groningen; and Tonya L. Putnam, Associate Professor, Department of Political Science, Columbia University. Committee Chair Brian Lepard moderated.

In addition, interested members of the Committee have continued to discuss launching a study of the status of international human rights law as customary international law, possibly in collaboration with the Committee on International Human Rights. Several Committee members have volunteered to assist with various aspects of this project. A research assistant to the Committee Chair has conducted research on the project over the past year and is assisting in preparing a prospectus for the project.

Committee on International Arbitration

Committee Co-Chairs: Floriane Lavaud (Debevoise & Plimpton LLP) and Daniel Reich (Shearman & Sterling LLP)

This Committee will sponsor two panels at International Law Weekend 2020. Entitled “2020 Vision: Trends and Challenges in the Enforcement of International Arbitral Awards,” the first panel will assess the major trends and challenges facing the enforcement regime for international arbitration awards as we look ahead to a new decade. The panel will explore perennial issues such as sovereign immunity and the impact of insolvency on enforcement, as well as newer challenges such as the disruptive effects of COVID-19 and the impact of current reform proposals for investor-state dispute settlement on enforcement. The panel will conclude by assessing prospects for changes to the enforcement regime in the near future. Panelists will include Lee M. Caplan, Partner, ArentFox, Washington D.C.; Kabir Duggal, Senior Advisor, Arnold & Porter, New York; and Linda Silberman, Clarence D. Ashley Professor of Law, New York University School of Law. Julianne Marley, Senior Associate, Debevoise & Plimpton, will moderate.

The second panel is entitled “Arbitration of Human Rights at Sea: Giving International Law Teeth by Empowering Victims to Enforce It.” Despite a well-established body of international human rights law, human rights abuses occur at sea with disquieting regularity. The problem seems not to lie in the content of the law, but rather in the way it is enforced. This panel will explore whether giving victims the ability to enforce rights directly through arbitration can improve human rights protection at sea. Panelists will include Prof. Emmanuel Gaillard, Global Head of Disputes, Shearman & Sterling LLP; David Hammond, Founder and CEO of UK charity Human Rights at Sea; Irini Papanicolopulu, Assistant Professor of International Law, University of Milano-Biocca; and Ursula Kriebaum, Professor of Public International Law, University of Vienna. Diane Desierto, Associate Professor of Human Rights Law and Global Affairs, Keough School of Global Affairs, University of Notre Dame, will moderate.

Committee on International Commercial Law

Committee Co-Chairs: Prof. Irene Calboli (Texas A&M University School of Law) and Jessica R. Simonoff (Georgetown University Law Center)

This Committee welcomes Irene Calboli as its new Co-Chair.

The Committee will sponsor a panel at International Law Weekend 2020 entitled “International Supply Chain: Challenges in the Time of Pandemics and Global Disruption.” The panel will feature Jasmine Bell, Partner, Debevoise & Plimpton LLP; Kathleen Claussen, Associate Professor of Law, University of Miami School of Law; and Elke Rehbock, Partner, Dentons. Committee Co-Chairs Irene Calboli and Jessica Simonoff will co-moderate.

In future months, the Committee Co-Chairs will closely monitor the ongoing developments and the challenges relating to the negotiation and enforcement of international contracts—in particular the adoption and enforcement of the “force majeure” clauses as related to international sales, distribution and other transactions affecting the international supply chain. If possible, the Committee will host a webinar on the topic.

Committee on the International Criminal Court

Committee Co-Chairs: Prof. Megan Fairlie (Florida International University College of Law) and Prof. Jennifer Trahan (NYU Center for Global Affairs)

This Committee welcomes Megan Fairlie as its new Co-Chair.

The Committee will sponsor a panel at International Law Weekend 2020 entitled “The U.S. and the International Criminal Court: Can a Court in the Netherlands be a U.S. National Security Threat?” The panel will feature Harold H. Koh, former Legal Adviser, U.S. Department of State and Sterling Professor of International Law, Yale Law School; Ambassador Clint Williamson, former U.S. Ambassador-at-Large for War Crimes Issues and Senior Director for International Rule of Law, Governance and Security, The McCain Institute; Ambassador Stephen J. Rapp, former U.S. Ambassador-at-Large for War Crimes Issues and former Head of the Office of Global Criminal Justice, U.S. Department of State; and Beth Van Schaack, Leah Kaplan Visiting Professor in Human Rights, Stanford Law School and former Deputy to the Ambassador-at-Large for War Crimes Issues, Office of Global Criminal Justice, U.S. Department of State. Committee Co-Chair Jennifer Trahan will moderate.

On October 1, 2020, the Committee issued a “Statement by the American Branch of the International Law Association International Criminal Court Committee: The Use of U.S. Sanctions to Undermine the Work of the ICC.” The statement, *inter alia*, expresses concerns about the United States’ imposition of asset freezes and travel bans against ICC staff pursuant to a June 11, 2020 Executive Order. The Statement calls for revocation of the Executive Order and that, until revocation, no additional persons be designated under it.

Future Committee plans include issuing a statement or letter urging changes to U.S./ICC policy should a new Administration come into office.

Committee on International Environmental and Energy Law

Committee Co-Chairs: Prof. Carolina Arlota (University of Oklahoma College of Law) and Prof. Myanna Dellinger (University of South Dakota School of Law)

This Committee has a new denomination, which now includes international energy law. The expansion reflects a growing trend in academic and practical interest in this field. It also highlights cutting-edge research topics concerning climate change, renewable energy, energy security, the Energy Charter Treaty, and the social cost of carbon.

The Committee welcomes Carolina Arlota as its new Co-Chair.

This Committee will sponsor a panel at International Law Weekend 2020 entitled “COVID-19 and Climate Change: A Setback or Strengthening the Resolve to Move Forward?” The panel will feature Committee Co-Chair Carolina Arlota; Michael Gerrard, Professor of Law and Director, Sabin Center for Climate Change Law, Columbia Law School; and Jolene Lin, Associate Professor of Law and Director, Asia-Pacific Centre for Environmental Law, National University of Singapore. Committee Co-Chair Myanna Dellinger will moderate.

Committee on International Human Rights

Committee Chair: Prof. Aaron X. Fellmeth (Sandra Day O'Connor College of Law, Arizona State University)

This Year's Activities

First, this Committee has been organizing panels for the International Law Weekend. Last year, the Committee collaborated with the Committee on International Humanitarian Law to form a debate panel on "Foreign Fighters and Their Families: How to Reconcile the Competing Demands of ICL, IHL, Human Rights and Refugee Law." This year, the Committee will sponsor a panel at International Law Weekend 2020 entitled "Novel Human Rights Crises during a Global Pandemic." The panel will feature Christina M. Cerna, Adjunct Professor of Law, Georgetown University Law Center; Paul Dubinsky, Professor of Law, Wayne State University School of Law; and Barbara Stark, Professor of Law and Hofstra Research Fellow, Maurice A. Deane School of Law, Hofstra University. Committee Chair Aaron Fellmeth will moderate.

Second, a group of Committee members made two joint stakeholders' reports to the U.N. Human Rights Council for the United States' Universal Periodic Review in 2020. One dealt with discrimination in immigration policy, gun violence, attempts to undermine international criminal justice, and inadequate remedies for violations of international human rights law. The second, under Prof. Stella Elias' leadership, dealt with discrimination on the basis of sex and gender, transgender discrimination, basic reproductive rights, and immigrant and refugee rights in general.

Third, a group of Committee members (shout out especially to Warren Binford and Stella Elias) filed an amicus brief with the U.S. Court of Appeals for the Ninth Circuit in *Flores v. Barr* regarding the Trump Administration's attempt to terminate a settlement agreement forbidding the government from long-term detention of migrant children. Oral argument was held in May, but the Committee is still awaiting the outcome.

Future Activities

This Committee will continue to organize panels for the International Law Weekend in future years.

Aside from that, the Committee's immediate plans are to follow up on the *Flores v. Barr* amicus brief with one to the U.S. Supreme Court, because that case will likely be appealed and is very probably going to be granted certiorari.

In addition, some members of the Committee may file amicus briefs relating to the human right to freedom of assembly in appeals from various lawsuits in Oregon and elsewhere regarding the abuse of force by city police, county sheriffs, and federal officers recruited from U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement against peaceful protesters and journalists.

Committee on International Humanitarian Law

Committee Co-Chairs: Prof. Gabor Rona (Benjamin N. Cardozo School of Law, Yeshiva University) and Ashika Singh (Debevoise & Plimpton LLP)

This Committee welcomes Gabor Rona as its new Co-Chair.

The Committee co-sponsored and organized a panel at International Law Weekend 2019 entitled “Foreign Fighters and Their Families: How to Reconcile the Competing Demands of International Humanitarian Law, Human Rights and Refugee Law, and Domestic Law.” This panel was structured as a debate and resulted in a vigorous and engaging discussion of the topic. Additionally, Committee Co-Chair Ashika Singh served as the Co-Chair of International Law Weekend 2019.

This Committee is co-sponsoring another panel at International Law Weekend 2020, entitled “Strengthening the International Criminal Court: A Path Forward?” The panel will feature Kevin Jon Heller, Associate Professor of Public International Law, Australian National University College of Law; Fiona McKay, Senior Managing Legal Officer on International Justice, Open Society Justice Initiative and former head of the ICC Victims Participation and Reparations Section; and Alex Whiting, Professor of Practice, Harvard Law School. Elizabeth Nielsen, Counsel, Debevoise & Plimpton LLP, will moderate.

The Committee Co-Chairs plan to convene a virtual meeting of Committee members in fall 2020 to plan additional activities for the coming year.

Committee on International Intellectual Property

Committee Co-Chairs: Prof. Sean Flynn (American University Washington College of Law) and Prof. Peter K. Yu (Texas A&M University School of Law)

This Committee undertook a number of activities exploring the intersection of international copyright law with the technical fields of text and data mining and artificial intelligence.

The Committee sponsored a roundtable on “International Intellectual Property Law in the Age of Smart Technology and Intelligent Machines” at International Law Weekend 2019. This timely roundtable brought together experts from around the world to explore the resilience of the international intellectual property regime and the tensions and conflicts posed by rapid technological change. Panelists included Committee Co-Chair Peter Yu, Cheryl Foong, Lecturer, Curtin Law School, Australia; Joe Karaganis, Vice-President, The American Assembly and Director, The Open Syllabus Project; Doris Estelle Long, Professor of Law Emeritus, UIC John Marshall Law School; and Michal Shur-Ofry, Associate Professor, The Hebrew University of Jerusalem, Israel. Committee Co-Chair Sean Flynn moderated the panel.

Since 2018, the Committee has been exploring opportunities for engaging academics in the activities of the World Intellectual Property Organization’s Standing Committee on Copyright and Related Rights. In 2018, the Committee reviewed the proposed Treaty on Education and Research Activities, endorsed by Education International and dozens of other civil society and academic organizations at the 5th Global Congress on Intellectual Property and the Public Interest in Washington, D.C. This Committee sponsored last year’s roundtable on “International Intellectual Property Law in the Age of Smart Technology and Intelligent Machines” in part because WIPO launched a study of this topic.

At International Law Weekend 2020, the Committee will sponsor a panel on “Intellectual Property and COVID-19 in International Law.” The panel will expand on some of the themes covered last year, including the relation between international copyright law and access to and use of research

materials for text and data mining. This panel of international experts will survey developments in international law and policy at the intersection of intellectual property law and responses to the COVID-19 pandemic. Topics to be covered include the COVID-19 implications for progress on creating a patent pool at the World Health Organization, the role of international instruments on copyright and the right to research at the World Intellectual Property Organization, the Open COVID Pledge for voluntary sharing of patent rights on health-related technology, regional intellectual property law reform in the European Union, and domestic reform in Brazil. The roundtable participants will include Rashmi Banga, Senior Economic Affairs Officer, United Nations Conference on Trade and Development (UNCTAD); Marsha Simone Cadogan, Principal, MSC Intellectual Property & Technology Law, Canada; Jorge Contreras, Presidential Scholar and Professor of Law, University of Utah; James Love, Director, Knowledge Ecology International; and Allan Rocha de Souza, Professor of Law, Federal University of Rio de Janeiro and Federal Rural University of Rio de Janeiro, Brazil. Committee Co-Chairs Sean Flynn and Peter Yu will co-moderate.

In the upcoming 79th ILA Biennial Conference in Kyoto, which will be held virtually due to the COVID-19 pandemic, the ILA Committee on Intellectual Property and Private International Law will submit the proposed *Guidelines on Intellectual Property in Private International Law* to an open session for the potential adoption of an ILA resolution. The work of the ILA Committee is particularly important now that intellectual property matters have been excluded from the scope of the new Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Four Branch members (Professors Rochelle Dreyfuss, Jane Ginsburg, Marketa Trimble, and Peter Yu) are involved in the project.

Committee on International Investment Law

Committee Co-Chairs: David Attanasio (Dechert LLP) and Diora Ziyaeva (Dentons)

This Committee continues to focus on organizing public events in collaboration with active members of the Committee, and to seek new members through those events. The Committee hosted a sponsored panel at International Law Weekend 2019 and has been working to promote the annual conference among members of the international dispute resolution field. The Committee has separately organized a roundtable on climate change and investment law and a conference on the power of investment tribunals to sanction misconduct.

The Events Subcommittee continues to program its ongoing Seminar Series, with a goal of having approximately two to three events per year, which would include a significant presence at the International Law Weekend every fall as well as standalone events each winter/spring.

International Law Weekend

This Committee will host a panel entitled “Investor-State Disputes, International Finance, and the COVID-19 Economic Crisis” at International Law Weekend 2020. The panel’s description is as follows: “Economic crises are a leading cause of investment disputes in the international finance sector—including disputes over sovereign defaults, banking sector interventions, and currency measures. This panel will consider whether and to what degree investment-state arbitration has a useful role to play in resolving the controversies that inevitably follow high-stakes regulatory actions in the midst of economic crisis.”

In addition, the Committee Co-Chairs are continuing an effort begun last year to work with the International Law Weekend Organizers to publicize the event in the international dispute resolution field. This has involved establishing a dedicated international dispute resolution track of programming, advertising in major investment arbitration fora, and organizing live summary posts of panels relevant to international dispute resolution practitioners.

In 2021, this Committee plans to continue these efforts to ensure that the International Law Weekend offers a broad array of panels geared toward international dispute resolution. The Committee also plans to continue the outreach efforts. In addition, with the support of the Branch's leadership, the Committee would like include a keynote address on international dispute resolution as part of the International Law Weekend programming.

Independent Conferences

On November 21, 2019, the Committee co-organized and co-sponsored a roundtable entitled "Climate Change, Energy, and International Investment Protections." Hosted by the Sustainable Energy Initiative at George Washington University, the discussion explored a range of questions about the intersection of international investment law and climate change, with a focus on whether investment law hinders or helps efforts to combat climate change. The roundtable participants included leading investment law practitioners and experts in climate change law, including Charles N. Brower, John R. Crook, and David Freestone.

On February 27, 2020, the Committee co-organized a conference entitled "What to Do About Corruption Allegations? Debating the Options for Investment Law." Hosted at Dechert LLP's Washington, D.C. office and forming part of Georgetown University's International Arbitration Month, the conference explored the authority of investment tribunals to sanction misconduct, including the question of when: prior to arbitration or in course of the arbitral proceedings themselves. The panelists included a range of practitioners and professors at various levels of seniority, and the conference was very well attended.

Committee on International Trade Law

Committee Chair: Prof. Richard Steinberg (UCLA School of Law)

This Committee held one meeting this year at which it discussed and attempted to plan a panel for International Law Weekend 2020. Regrettably, the member who assumed the lead in organizing the panel did not succeed. The Committee will meet during the International Law Weekend to set a new agenda for next year.

Committee on Islamic Law & Society

Committee Chair: Prof. Sahar Aziz (Rutgers Law School)

This Committee, previously known as the Committee on Islamic Law, has been renamed the Committee on Islamic Law & Society and welcomes Sahar Aziz as its new Chair.

Over the past couple of months, the Committee Chair successfully recruited additional members to the Committee.

This Committee will sponsor a panel at International Law Weekend 2020 entitled “Race, Culture, and Law in Muslim-Majority Countries.” The panel will feature Mohamed Azmy, President of the General Nubian Union and an Egyptian Human Rights Lawyer; Bernard Freamon, Professor of Law Emeritus, Seton Hall Law School; and Saad Salloum, Executive Director, Masarat. Committee Chair Sahar Aziz will moderate.

The Committee plans to meet in November 2020 to discuss programming, including the theme for a panel proposal for International Law Weekend 2021.

Committee on Law of the Sea

Committee Chair: Coalter G. Lathrop (Sovereign Geographic)

This Committee will sponsor a panel at International Law Weekend 2020 entitled “Submarine Cables and Pipelines under International Law: The Ongoing Work of the ILA Committee.” The panel will feature Danae Azaria, Associate Professor in Law, University College London and Co-Rapporteur, ILA Study Committee on Submarine Cables and Pipelines; Kent Bressie, Partner, Harris, Wiltshire & Grannis and Member, ILA Study Committee on Submarine Cables and Pipelines; Tara Davenport, Deputy Director, Asia-Pacific Centre for Environmental Law and Assistant Professor, Faculty of Law, National University of Singapore and Co-Rapporteur, ILA Study Committee on Submarine Cables and Pipelines; Onni Irish, Senior Manager, Desktop Studies, SubCom and Member, ILA Study Committee on Submarine Cables and Pipelines. Committee Chair Coalter Lathrop will moderate.

Committee on Space Law

Committee Co-Chairs: Prof. Henry R. Hertzfeld (Elliott School of International Relations, The George Washington University) and Prof. Matthew Schaefer (University of Nebraska College of Law)

This Committee sponsored a space law panel at International Law Weekend 2019 entitled “The Resilience of the International Law of Outer Space in Light of Technology, Business, and Military Developments.” The panel’s description is as follows: “Is the hard and soft international law governing the increasingly competitive, congested, and contested outer space domain resilient enough for new developments? Can national legislation (and gradual harmonization of such legislation), combined with diplomacy and non-governmental initiatives and the disciplines of finance and insurance, adequately fill gaps and ambiguities and provide the minimal standards necessary to ensure space will continue to provide benefits to countries, their economies, and their citizens?” Speakers included Committee Co-Chair Henry Hertzfeld; Kelsey McBarron, Associate, Schroeder Law Firm, Washington, D.C.; Blake Gilson, Associate, Transportation and Space Group, Milbank Tweed, New York; and Jack Beard, Associate Professor of Law and Co-Director, Space, Cyber and Telecom Law Program, University of Nebraska College of Law (who substituted for Jessica Tok, Senior Space Policy Analyst, U.S. Department of Defense, who was ill and unable to attend). Committee Co-Chair Matthew Schaefer moderated.

The Committee will also sponsor a panel at International Law Weekend 2020 entitled “Standard Setting for Outer Space Activities: Choice of Forums and Methods.” The panel’s description is as follows: “New commercial activities and public-private partnerships in outer space demand further flesh be put on the bones of existing international space norms for safety, sustainability, capabilities for long-term presence and protection of heritage sites. Nations and private actors are cooperatively

engaging in new standard-setting forums, including through the Artemis Accords, Committee on Space Research (COSPAR), Consortium for Execution and Rendezvous of Servicing Operations (CONFERS), and via national regulatory reforms (including the Streamlining Launch Licensing reform effort by FAA-AST). This roundtable will explore and evaluate the choice of options on the outer space standard-setting menu.” Speakers will include Committee Co-Chair Henry Hertzfeld; Mike Gold, Acting Associate Administrator, Office of International and Interagency Affairs, NASA; Audrey Powers, Vice-President—Legal and Compliance, Blue Origin; and Caryn Schenewerk, Vice-President—Regulatory and Government Affairs, Relativity Space. Committee Co-Chair Matthew Schaefer will moderate.

Through these two International Law Weekend panels, this Committee has involved senior industry executives and legal counsels, new voices through the inclusion of associates at New York and Washington, D.C. law firms, as well as academics.

This Committee is keeping an eye on possible grant opportunities similar to the NASA grant in 2018 administered by the University of Nebraska, which funded students from around the country to attend the International Law Weekend. A similar grant would allow for more nationwide student participation in International Law Weekend 2021.

Additional Conferences, Research, Activities, and Cooperation

Committee Co-Chairs Henry Hertzfeld and Matthew Schaefer have sponsored additional panels and research through their home institutions (University of Nebraska and George Washington University). These activities have featured government-industry roundtables on issues the Committee looked at in its International Law Weekend panels in the past several years (new technologies, liability, property rights, and regulation of commercial space). The University of Nebraska hosted the 12th Annual D.C. Space Law Conference on October 18, 2019, which focused on “Global Perspectives on Space Law and Policy” and built on the presence of the International Astronautical Congress/International Institute of Space Law Colloquium on the Law of Outer Space in Washington, D.C. on October 21–25. The conference had over 200 registrants, again making it one of the two largest space law conferences in North America.

On October 23, 2019, Committee Co-Chair Matthew Schaefer presented a paper at the International Astronautical Congress/International Institute of Space Law Colloquium on the Law of Outer Space regarding harmonization of national space law. Entitled “What Level of Detail in National Space Legislation Is Ideal for the Harmonization and Enforcement of Such Legislation and International Space Law?” the paper was published in the 62nd IISL Colloquia of Laws of Outer Space of the International Institute of Space Law.

The University of Nebraska just hosted its 13th Annual D.C. Space Law Conference as a Nebraska Virtual Space Law Week due to the COVID-19 pandemic, with sessions each day throughout the week from September 28 to October 2. Sessions focused on commercial space law, including streamlining launch licensing, reform of COSPAR standards on harmful contamination and planetary protection, the Artemis Accords, spectrum management issues and reform before the International Telecommunication Union and the Federal Communications Commission, and military operations in outer space and the dangers of cross-domain analogies. Speakers included high-ranking officials from Blue Origin, Relativity Space, NASA, U.S. Department of State (retired), U.S. Department of Commerce, COSPAR, NASA Planetary Protection Independent Review Board, Lockheed Martin,

OneWeb, and Echostar. There were 398 attendees in the panel sessions throughout the week. This Committee was a formal co-sponsor of the Annual Nebraska D.C. Space Law Conferences in 2019 and 2020.

In the first half of 2021, the Committee will collaborate with the American Society of International Law's Space Law Interest Group on a "World Speaks Space" series, utilizing Zoom webinar capabilities to gather diverse perspectives on key space law and policy issues from around the world.

In 2019 and 2020, Committee Co-Chairs Henry Hertzfeld and Matthew Schaefer have been involved in informal discussions with industry, Executive Branch officials, and Congressional staff on space resources, COSPAR planetary protection standard reform, and how the U.S. government can best meet its Article VI obligations in the Outer Space Treaty to authorize and supervise new on-orbit activities, such as satellite servicing, lunar research facilities and rovers, and asteroid mining. It is likely that the new Congress in 2021–2022 will look at significant commercial space legislation, and the Committee will keep an eye on letter-writing possibilities such as what the Committee did in 2015 with respect to space resources.

This Committee is open to sponsoring panels at ABILA regional conferences as opportunities arise.

Committee on Teaching Public International Law

Committee Co-Chairs: Prof. Mark E. Wojcik (UIC John Marshall Law School) and Prof. Milena Sterio (Cleveland-Marshall College of Law, Cleveland State University)

This Committee welcomes Milena Sterio as its new Co-Chair.

The Committee sponsored a panel entitled "Teaching International Law during Challenging Times." The panel featured Committee Co-Chair Mark Wojcik; Cindy Buys, Professor of Law, Southern Illinois University School of Law; Darin Johnson, Professor of Law, Howard University School of Law; and Jennifer Trahan, Clinical Professor, Center for Global Affairs, New York University. Committee Co-Chair Milena Sterio moderated. The panel was co-sponsored by the American Society of International Law Teaching International Law Interest Group.

The Committee is also reviving its newsletter and invites committee members to submit announcements of upcoming activities, upcoming conferences, recent publications, and personal accomplishments.

Committee on United Nations Law

Committee Co-Chairs: Dr. Christiane Ahlborn (United Nations) and Dr. Bart L. Smit Duijzentkunst (United Nations)

This Committee will sponsor a panel at International Law Weekend 2020 entitled "UN Diplomacy in Times of COVID-19." The panel will feature Pablo Arrocha, Legal Adviser, Permanent Mission of Mexico to the United Nations; Jan Klabbers, Professor of International Law, University of Helsinki; Blanca Montejo, Senior Political Affairs Officer, Security Council Affairs Division; and Keiichiro Okimoto, Legal Officer, Office of the Legal Counsel, United Nations. Committee Co-Chair Bart Smit

Duijzentkunst will moderate. The panel will be co-sponsored by the American Society of International Law International Organizations Interest Group.

On November 7, 2019, the Committee and American Society of International Law International Organizations Interest Group jointly sponsored a panel on “Perspectives on UN Partnerships,” which the Permanent Mission of the Kingdom of the Netherlands to the United Nations kindly hosted. The panel was opened by H.E. Ms. Frédérique de Man, Deputy Permanent Representative, and moderated by Prof. Sean Murphy, the president of the American Society of International Law and a member of the International Law Commission. The speakers included Cynthia Licul, Senior Legal Adviser, United Nations Development Programme; Maria Mkandawire, Senior Legal Affairs Specialist, UNICEF; Robert Skinner, Executive Director, United Nations Office for Partnerships; and Math Noortman, Professor in Transnational Law and Non-State Actors, Centre for Trust, Peace and Social Relations, Coventry University and Executive Director, Academic Council on the United Nations System.

Committee on the Use of Force

Committee Chair: Prof. Jack M. Beard (University of Nebraska College of Law)

This Committee will sponsor a panel of distinguished experts at International Law Weekend 2020 entitled “From Accord back to Confrontation: The Return of the Iran Nuclear Crisis.” The panel will consider the return of the international crisis concerning Iran’s nuclear program following the Trump Administration’s decision in 2018 to withdraw from the 2015 Joint Comprehensive Plan of Action. The increase in tension between Iran and the United States since the withdrawal has led to a dangerous standoff that has already produced military action on both sides. The panel will discuss related international legal questions and the future of Iran’s nuclear program in the context of this year’s International Law Weekend theme of “International Law in Challenging Times.” The panel will be co-moderated by Committee Chair Jack Beard and Deputy Committee Chair Dan Joyner, Elton B. Stephens Professor of Law and Director, International Programs, University of Alabama School of Law.

Study Group on Threats to the Liberal International Order

Study Group Chair: Prof. David L. Sloss (Santa Clara University School of Law)

This Study Group has met twice in the past year—first in New York in October 2019 then at Santa Clara University in February 2020. Some Study Group members participated in a panel at International Law Weekend 2019. The main output from the Study Group will be a book published by Oxford University Press. Study Group Chair David Sloss will serve as the editor, and 17 contributing authors will write 15 separate chapters, including two co-authored chapters. First drafts of chapters will be due to the editor this fall. The completed manuscript will be delivered to the publisher in spring 2021.

American Branch Members on ILA Committees

Branch members continue to be active on ILA Committees. The following members are currently serving on those committees:

Committee on Complementarity in International Criminal Law: Prof. Leila Sadat

Committee on Global Health Law: Prof. Frederick Abbott (Co-Chair), Prof. Ryan Abbott, and Dr. Ruth Atherton

Committee on Human Rights in Times of Emergency: Prof. Christina Cerna (Co-Chair), Prof. William Aceves, and Prof. Aaron Fellmeth

Committee on Implementation of the Rights of Indigenous Peoples: Prof. Dalee Dorrough (Co-Chair), Prof. Lorie Graham, and Prof. Siegfried Wiessner

Committee on Intellectual Property and Private International Law: Prof. Rochelle C. Dreyfuss, Prof. Jane C. Ginsburg, Prof. Marketa Trimble, and Prof. Peter K. Yu

Committee on International Commercial Arbitration: Hon. Charles Brower, Philip O'Neill, Prof. Louise Ellen Teitz, Prof. Ruth Wedgwood, Prof. Ved Nanda (Alternate), Prof. Andrea Bjorklund (Alternate), and Prof. Paul Dubinsky (Alternate)

Committee on International Law and Sea Level Rise: Prof. Maxine Burkett (Co-Rapporteur), Prof. Elizabeth Burleson, Prof. Sean Murphy, Captain J. Ashley Roach, and Dr. Anita Halvorsen (Alternate)

Committee on International Monetary Law: Thomas Baxter, Jr. (Vice-Chair), David Gross (Rapporteur), Lee Buchheit, James Freis, Prof. Cynthia Lichtenstein, and Ernest Patrikis

Committee on International Protection of Consumers: Prof. James Nehf

Committee on International Securities Regulation: Paul Stevens (Rapporteur), Edward Fleischman, and Prof. Cynthia Lichtenstein

Committee on Nuclear Weapons, Non Proliferation and Contemporary International Law: Prof. Larry Johnson

Committee on Participation in Global Cultural Heritage Governance: Prof. James Nafziger and Prof. Alison Renteln

Committee on Procedure of International Courts and Tribunals: Prof. Jeffrey Dunoff and Prof. Chiara Giorgetti

Committee on Protection of Privacy in Private International and Procedural Law: Dr. Cristina M. Mariottini (Co-Rapporteur), Prof. David P. Stewart, and Prof. Louise Ellen Teitz

Committee on Role of International Law in Sustainable Natural Resource Management for Development: Prof. Charles Marvin and Prof. Ved Nanda

Committee on Rule of Law and International Investment Law: Prof. Andrea Bjorklund (Co-Rapporteur) and Prof. Jose Alvarez

Committee on Space Law: Rafael Moro Aguilar, Prof. Matthew Schaefer, and Prof. Frans von der Dunk

Committee on Submarine Cables and Pipelines under International Law: Captain J. Ashley Roach (Chair), Kent D. Bressie, Onni Irish, and Alice Colarossi Leonard de Juvigny

Committee on Sustainable Development and the Green Economy in International Trade Law: Gary Horlick, Amelia Porges, and Prof. Paolo Farah (Alternate)

Committee on the Use of Force: Military Assistance on Request: Prof. Jack M. Beard, Prof. Mary Ellen O'Connell, Prof. Jennifer Trahan, and Prof. Brad Roth (Alternate)

**2021 REPORT OF THE DIRECTORS OF STUDIES
JENNIFER TRAHAN AND PETER K. YU**

Committee on Arms Control and Disarmament

Committee Chair: Prof. Christopher Borgen (St. John's University School of Law)

This Committee held a panel at International Law Weekend 2020 on “Weaponry, Technology, Uncertainty, and Regulation” with presentations by William Boothby, Honorary Professor, Australian National University and Air Commodore (retired), Royal Air Force; Dr. Heather Harrison Dinniss, Senior Lecturer, Centre for International and Operational Law, Swedish Defense University; and Dr. Laura Grego, Senior Scientist, Global Security Program, Union of Concerned Scientists. Committee Chair Christopher Borgen moderated. The panel considered the challenges of regulating the development and use of emerging technologies in armed conflicts, such as artificial intelligence, cyberweaponry, autonomous weapons, hypersonic missiles, and space systems.

Committee on the Formation of Rules of Customary International Law

Committee Chair: Prof. Brian Lepard (University of Nebraska College of Law)

This Committee sponsored a Networking Room at International Law Weekend 2020 with about thirty participants, many of them students from around the world. Kevin Cheng, Committee Chair Brian Lepard's research assistant, made a presentation on the research he has done on the work of the United Nations on various contemporary human rights issues in connection with the Committee's planned study of the status of international human rights norms as customary international law. A number of student participants expressed interest in the Committee's work and corresponded with Professor Lepard following the networking event.

Interested members of the Committee have continued to discuss this study, including possible collaboration with the Committee on International Human Rights. Committee Chair Brian Lepard plans to submit a prospectus for the study to the Committee in the coming year to help advance the Committee's work on it.

During 2021, the Committee collaborated with the newly formed Committee on the Legitimacy and Fundamental Principles of International Law, chaired by Professor Mortimer Sellers, to plan a panel for International Law Weekend 2021. The panel, entitled “Reinvesting in the Legitimacy and Fundamental Principles of Customary International Law,” will be discussed later in the report of the new committee.

Committee on International Arbitration

Committee Co-Chairs: Floriane Lavaud (Debevoise & Plimpton LLP) and Daniel Reich (Shearman & Sterling LLP)

During the past year, this Committee and the Committee on International Investment Law worked closely to put together an Investment Arbitration Workshop series, with panels focusing on cutting-edge issues in different global regions.

The first installment of the series, addressing “The Latest Challenges in Latin America,” took place online on April 14, 2021. The speakers discussed the significance of human rights and corruption issues in recent investment arbitrations, as well as how the investment protection system may modernize to resolve these and other recurring challenges in Latin America. Organized by David Attanasio, Co-Chair, Committee on International Investment Law, the panel consisted of the following speakers: Mélida Hodgson, Partner, Jenner & Block; Andrés Jana, Partner, Bofill Mir & Alvarez Jana Abogados; Maria A. Burgos, Associate, Baker McKenzie; and Attanasio. As part of this series, the two committees plan to organize additional panels during the coming year, with each panel dedicated to addressing investment arbitration developments in a different region of the world.

In addition, this Committee has sponsored the panel “Rethinking the Service of Documents in Cross-Border Transactions,” which will be part of International Law Weekend 2021. As with last year, the Committee and the Committee on International Investment Law will be co-hosting a Networking Room during the Weekend.

This Committee is also coordinating with the Committee on International Investment Law to promote the International Law Weekend to the global international arbitration community and to disseminate summary reports of arbitration-related panels after the conference.

Committee on International Commercial Law

Committee Co-Chairs: Prof. Irene Calboli (Texas A&M University School of Law) and Prof. Jessica R. Simonoff (Georgetown University Law Center)

This Committee will sponsor a panel at International Law Weekend 2021 entitled “Sustainability and Ethical Trade in Times of Uncertainty: The Role of Corporate Social Responsibility Between Self-Regulation and Legal Obligations.” The panel will feature Diana Verde Nieto, Co-Founder and CEO, Positive Luxury; Gail A. Lione, Senior Counsel, Dentons and Adjunct Professor, Georgetown University Law Center; and Brad Brooks-Rubin, Strategic Advisor, Responsible Jewellery Council. Committee Co-Chairs Jessica Simonoff and Irene Calboli will co-moderate. The panel aims to address the increasingly important topic of sustainability and its impact on the international supply chain.

Committee on the International Criminal Court

Committee Co-Chairs: Prof. Megan Fairlie (Florida International University College of Law) and Prof. Jennifer Trahan (NYU Center for Global Affairs)

This Committee will sponsor a panel at International Law Weekend 2021 entitled “Renewing and Improving the United States’ Relationship with the International Criminal Court.” The panel will feature Michael A. Newton, Professor of the Practice of Law, Professor of the Practice of Political Science, and Director, Vanderbilt-in-Venice Program, Vanderbilt Law School; Diane Orentlicher, former Deputy for War Crimes Issues, U.S. Department of State and Professor, American University Washington College of Law; David J. Scheffer, former U.S. Ambassador-at-Large for War Crimes Issues, U.S. Department of State and Clinical Professor Emeritus and Director Emeritus, Center for International Human Rights, Northwestern University Pritzker School of Law; and Clint Williamson, former U.S. Ambassador-at-Large for War Crimes Issues and Senior Director for International Rule of Law, Governance and Security, The McCain Institute. Committee Co-Chair Jennifer Trahan will moderate.

The Committee will also co-sponsor, with the Committee on the United Nations, a panel entitled “When Vetoes Enable Atrocity Crimes: What If the Security Council Were Not Blocked from Acting When Faced with Atrocity Crimes?” To be held virtually on November 17, 2021, this panel will feature Ambassador Bob Rae, Permanent Representative, Permanent Mission of Canada to the United Nations; Ambassador Christian Wenaweser, Permanent Representative, Permanent Mission of Liechtenstein to the United Nations; Ambassador Juan Manuel Gómez-Robledo, Deputy Permanent Representative, Permanent Mission of Mexico to the United Nations; and Committee Co-Chair Jennifer Trahan. It will be moderated by Andras Vamos-Goldman, formerly Founder and Executive Director, Justice Rapid Response and formerly Political Coordinator and Legal Adviser, Canadian Mission to the United Nations.

In addition, the Committee will co-sponsor a panel entitled “Prosecuting the Crime of ‘Ecocide’ at the ICC and Elsewhere” with the Committee on International Environmental and Energy Law. The panel will be described later in the report of the latter.

On November 5, 2021, this Committee will co-sponsor an event entitled “Cyberattacks and the International Criminal Court’s Rome Statute: Marking the Launch of a Report by the Council of Advisers on the Rome Statute and Cyberwarfare.” Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations, will deliver the keynote address. Pano Yannakogeorgos, Clinical Associate Professor and Program Director, M.S. in Global Security, Conflict and Cybercrime, NYU Center for Global Affairs, will provide an overview. The panelists will be Oona A. Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law and Counselor to the Dean, Yale Law School; Charles C. Jalloh, Professor of Law, Florida International University School of Law and U.S. representative to the International Law Commission; Claus Kress, Professor of International Law and Criminal Law, Chair for German and International Criminal Law, and Director of the Institute of International Peace and Security Law, University of Cologne and Ad Hoc Judge, International Court of Justice; Matthew Cross, Appeals Counsel, Office of the Prosecutor, International Criminal Court; and Committee Co-Chair Jennifer Trahan. The moderator will be Noah Weisbord, Associate Professor, Queen’s University School of Law. The panel will also be co-sponsored by NYU Center for Global Affairs, The Permanent Mission of Liechtenstein to the United Nations, and The Global Institute for the Prevention of Aggression (of which Committee Co-Chair Jennifer Trahan serves as Convenor).

On January 15, 2021, the Committee issued a statement entitled *The Biden Administration Should Rescind the Executive Order Imposing Sanctions on Officials of the International Criminal Court*. On May 4, the Committee also issued a joint statement with the U.S. chapter of the Association Internationale de Droit Pénal, congratulating International Criminal Court Prosecutor Fatou Bensouda and the Office of the Prosecutor of the International Criminal Court for their joint nomination for the 2021 Nobel Peace Prize.

Committee on International Environmental and Energy Law

Committee Co-Chairs: Prof. Carolina Arlota (University of Oklahoma College of Law) and Prof. Myanna Dellinger (University of South Dakota School of Law)

This Committee is actively participating at International Law Weekend 2021. It is co-sponsoring a panel on ecocide (“Prosecuting the Crime of ‘Ecocide’ at the ICC and Elsewhere”) with the Committee on International Criminal Court. It also organized a panel on the role of the United States

in matters of climate governance. Titled “Back in the Game: Assessing the United States’ Reengagement in the Paris Agreement and Climate Governance,” the panel will feature Committee Co-Chair Carolina Arlota; Charlotte Ku, Professor of Law and Director, Global Programs, Texas A&M University School of Law; Albert Lin, Professor of Law, University of California Davis, School of Law; and Tade Oyewunmi, Assistant Professor of Law, University of Vermont Law School. Committee Co-Chair Myanna Dellinger will moderate.

In addition, the Committee Co-Chairs have been working on different fronts. Professor Arlota served on the Organizing Committee of International Law Weekend 2021. Professor Dellinger continues to advance international environmental and energy law research and awareness through her podcast (<http://theglobalenergyandenvironmentallaw.podbean.com>).

Committee on International Human Rights

Committee Chair: Prof. Aaron X. Fellmeth (Sandra Day O’Connor College of Law, Arizona State University)

This Year’s Activities

This Committee has been organizing panels for the International Law Weekend. In 2020, this Committee held a panel entitled “Novel Human Rights Crises during a Global Pandemic.” The panel featured Christina M. Cerna, Adjunct Professor of Law, Georgetown University Law Center; Paul Dubinsky, Professor of Law, Wayne State University School of Law; and Barbara Stark, Professor of Law and Hofstra Research Fellow, Maurice A. Deane School of Law, Hofstra University. Committee Chair Aaron Fellmeth moderated.

At International Law Weekend 2021, the Committee will sponsor a panel entitled “Surveillance, Privacy and Human Rights.” The participants will include Brian Egan, Partner, Steptoe & Johnson and former Legal Adviser, U.S. Department of State; Els de Busser, Assistant Professor, Leiden University and Researcher, The Hague Program for Cyber Norms; Margaret Hu, Associate Dean for Non-J.D. Programs and Professor of Law, Penn State Law; Becky Richards, Civil Liberties and Privacy Officer, U.S. National Security Agency; and Patrick Toomey, Senior Staff Attorney, American Civil Liberties Union. Peter S. Margulies, Professor of Law, Roger Williams University School of Law, will moderate.

Members of the Subcommittee on Gun Violence and Human Rights, under the leadership of Branch President Leila Sadat, submitted an amicus brief to the U.S. Supreme Court in *New York State Rifle & Pistol Association v. Bruen* on behalf of Amnesty International USA and the Gun Violence and Human Rights Initiative of the Whitney R. Harris World Law Institute. The brief explained how state gun control laws like those in New York help the United States avoid violating its obligations under international human rights law.

The Committee has formed a Working Group on Human Rights and Consumer Protection, chaired by Chrystin Ondersma and Sarah Dadush, both of Rutgers Law School. The Working Group will start by producing a white paper on the relationship between consumer protection and international human rights law. The white paper will form the basis for future coordination and action in this area.

Planned Future Activities

This Committee will continue organizing panels for the International Law Weekend in future years, drafting the white paper on consumer protection and human rights, and monitoring the development of U.S. policy on gun control for the protection of the human rights to life, security of person, and health.

Committee on International Humanitarian Law

Committee Co-Chairs: Prof. Gabor Rona (Benjamin N. Cardozo School of Law, Yeshiva University) and Ashika Singh (Debevoise & Plimpton LLP)

This Committee will sponsor a panel for International Law Weekend 2021, entitled “Minding the Gaps: Strengthening Accountability for War Crimes under U.S. Law.” The panel will feature Geoff Corn, Gary A. Kuiper Distinguished Professor of National Security, South Texas College of Law; Teresa McHenry, Head of Human Rights and Special Prosecutions Section, U.S. Department of Justice; Beth Van Schaack, Leah Kaplan Visiting Professor of Human Rights, Stanford Law School; and Rachel Van Landingham, Lieutenant Colonel (retired) and Professor of Law, Southwestern Law School. Committee Co-Chair Gabor Rona will moderate.

On June 25, 2021, the Committee, in coordination with the American Society of International Law (ASIL) Program Committee, organized a panel entitled “*The Mauritanian* and the Future of Guantánamo”—the inaugural panel of the ASIL Film Series. The panel featured Nancy Hollander, Freedman Boyd Hollander Goldberg Urias & Ward PA; Judge V. Stuart Couch, Board of Immigration Appeals and a former Military Commissions prosecutor; Brian Egan, former Legal Adviser, U.S. Department of State and Partner, Steptoe & Johnson LLP; Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School; and Andrea Prasow, Deputy Washington Director, Human Rights Watch. Committee Co-Chair Ashika Singh moderated.

Committee on International Intellectual Property

Committee Co-Chairs: Prof. Sean Flynn (American University Washington College of Law) and Prof. Peter K. Yu (Texas A&M University School of Law)

This Committee sponsored a panel on “Intellectual Property and COVID-19 in International Law” at International Law Weekend 2020. The panel surveyed developments in international law and policy at the intersection of intellectual property law and responses to the COVID-19 pandemic. Among the covered topics were the COVID-19 implications for progress on creating a patent pool at the World Health Organization, the role of international instruments on copyright and the right to research at the World Intellectual Property Organization, the Open COVID Pledge for voluntary sharing of patent rights on health-related technology, regional intellectual property law reform in the European Union, and domestic reform in Brazil. The participants included Rashmi Banga, Senior Economic Affairs Officer, United Nations Conference on Trade and Development; Marsha Simone Cadogan, Principal, MSC Intellectual Property & Technology Law, Canada; Jorge Contreras, Presidential Scholar and Professor of Law, University of Utah; James Love, Director, Knowledge Ecology International; and Allan Rocha de Souza, Professor of Law, Federal University of Rio de Janeiro and Federal Rural University of Rio de Janeiro. Committee Co-Chairs Sean Flynn and Peter Yu co-moderated.

In November 2020, the Committee co-sponsored a panel on “A WTO Waiver for Intellectual Property for COVID?” The event was co-sponsored by the Committee, the Program on Information Justice and Intellectual Property at American University Washington College of Law, and the Center for Law and Intellectual Property at Texas A&M University School of Law. The event featured presentations on the details of the proposed TRIPS waiver by U.S. Congresswoman Jan Schakowsky; Mustaqeem de Gama, Counsellor, Permanent Mission of South Africa to the World Trade Organization; Burcu Kilic, Research Director, Public Citizen’s Access to Medicines Program; and Simon Lester, Associate Director, Herbert A. Stiefel Center for Trade Policy Studies, Cato Institute. The panel was followed by a roundtable discussion with members of the Committee, including Frederick Abbott, Edward Ball Eminent Scholar Professor of International Law, Florida State University College of Law; Sharon Sandeen, Robins Kaplan Distinguished Professorship in Intellectual Property Law and Director, Intellectual Property Institute, Mitchell Hamline School of Law; and Josh Sarnoff, Professor of Law, DePaul University College of Law; and Committee Co-Chairs Sean Flynn and Peter Yu.

At International Law Weekend 2021, the Committee will sponsor a panel entitled “Debating a WTO TRIPS Waiver for COVID.” Held in the run-up to the 12th WTO Ministerial Conference in Geneva, this timely panel brings together leading intellectual property experts to explore the process and politics surrounding the proposal from India and South Africa for a waiver of select provisions in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights to promote the prevention, treatment and containment of COVID-19. The participants will include J. Janewa OseiTutu, Associate Professor of Law, Florida International University College of Law; Srividhya Ragavan, Professor of Law and Director, India Program, Texas A&M University School of Law; Professors Sandeen and Sarnoff; and Antony Taubman, Director, Intellectual Property, Government Procurement and Competition Division, World Trade Organization. Committee Co-Chairs Sean Flynn and Peter Yu will co-moderate.

During the 79th ILA Biennial Conference in Kyoto, which was held virtually due to the COVID-19 pandemic, the ILA adopted, through a resolution at the closing plenary, the Guidelines on Intellectual Property in Private International Law, submitted by the Committee on Intellectual Property and Private International Law. Now commonly referred to as the Kyoto Guidelines, this instrument has since been translated into Chinese, French, German, Italian, Korean, and Russian. Five Branch members (Professors Rochelle Dreyfuss, Aaron Fellmeth, Jane Ginsburg, Marketa Trimble, and Peter Yu) have been involved in the project over the years. The ILA Committee, which was formed in November 2010, was dissolved after the Biennial Conference.

Committee on International Investment Law

Committee Co-Chairs: David Attanasio (Dechert LLP) and Diora Ziyaeva (Dentons)

This Committee continues to focus on organizing public events in collaboration with the active members of the Committee, and to seek new members through those events. This year, the Committee has contributed one sponsored panel to the International Law Weekend and has separately organized a webinar on international investment arbitration in Latin America.

The Events Subcommittee continues to program its ongoing Seminar Series, with a goal of having approximately two to three events per year, including significant contributions to the International Law Weekend in the fall and a standalone event in Winter/Spring.

International Law Weekend

At International Law Weekend 2020, the Committee sponsored a panel entitled “Investor-State Disputes, International Finance, and the Economic Crisis.” The panel’s description is as follows: “Economic crises are a leading cause of investment disputes in the international finance sector—including disputes over sovereign defaults, banking sector interventions, and currency measures. This panel will consider whether and to what degree invest[or]-state arbitration has a useful role to play in resolving the controversies that inevitably follow high stakes regulatory actions in the midst of economic crisis.”

The Committee also hosted a joint Networking Room with the Committee on International Arbitration in 2020, to great success. The Networking Room was joined by individuals from all corners of the world and had a vibrant discussion of the field.

In 2021, the Committee will sponsor a panel entitled “Investment Law and the Future of International Energy Governance.” The panel’s description is as follows: “The energy sector accounts for a third of all global investment disputes. The trend began with the hydrocarbons sector and has slowly transitioned into disputes involving investments in the renewables sector. The panel will address the role that the existing investment regime plays in international energy governance, including the calls for the cancellation of ISDS [investor-state dispute settlement] arbitration claims involving the transition into renewable energy; the pressures to renegotiate government contracts to achieve climate change goals; and related energy market tensions that emerge from the interplay between international energy transition and investment law.”

In addition, the Committee Co-Chairs continue to work with the International Law Weekend Organizers to publicize the event in the field of international dispute resolution. This effort has involved establishing a dedicated practitioners’ track of programming, advertising in major investment arbitration fora, and organizing live summary posts of each panel relevant to international dispute resolution practitioners.

In 2022, the Committee plans to continue these efforts to ensure that the International Law Weekend offers a broad array of panels geared towards international dispute resolution. The Committee also plan to continue the outreach efforts. In addition, with the support of Branch leadership, the Committee would like include a keynote address on international dispute resolution as part of the Weekend’s programming.

Independent Conferences

Because of the global pandemic, this Committee was less active than in the past in presenting independent conferences. Nevertheless, the Committee co-organized and co-sponsored a webinar entitled “Investment Arbitration Workshop: The Latest Challenges in Latin America.” Hosted by Dechert and co-sponsored by the Committee on Investment Arbitration, the webinar focused on cutting-edge issues for investment arbitration in Latin America, including human rights, corruption, and investor-State dispute settlement reform. The panelists for this well-attended webinar included a range of practitioners at various levels of seniority and in varying roles.

In the remainder of 2021 and 2022, the Committee plans to resume our normal activity level, pandemic permitting, of two to three events per year.

Committee on International Trade Law

Committee Chair: Prof. Richard Steinberg (UCLA School of Law)

This Committee explored a proposal for a panel entitled “U.S. Trade Law and Policy: Challenges Facing the Biden Administration” at International Law Weekend 2021. The Committee also considered a joint panel proposal with the Committee on Space Law entitled “New Directions in American Foreign Policy: Trade, Space, and Cyber.” Several Branch members joined a Zoom meeting in late 2020 to plan the proposal. However, upon learning that the Weekend would again be held virtually, the Committee decided to submit the panel proposals for International Law Weekend 2022 instead.

Committee on International Law in Domestic Courts

Committee Co-Chairs: Prof. Martin Flaherty (Fordham University Law School and Princeton University) and Prof. Steven M. Schneebaum (Steven M. Schneebaum, P.C. and Johns Hopkins School of Advanced International Studies).

In its inaugural year, this Committee organized and hosted an online panel on June 24, 2021, addressing the Supreme Court’s decision in *Doe v. Nestlé and Cargill*. Panelists included David Golove, Hiller Family Foundation Professor of Law, New York University School of Law; Michael Shapiro, Shapiro Dorothy W. Nelson Professor of Law, Emeritus, USC Gould School of Law; Beth Stephens, Distinguished Professor of Law, Rutgers Law School; and Paul Hoffman, Partner, Schonbrun, DeSimone, Seplow, Harris & Hoffman, LLP.

At International Law Weekend 2021, the Committee will sponsor a panel entitled “How Should U.S. Courts Deal with the Law and Judgments of Authoritarian States?” The panelists will be Vivienne Bath, Professor of Chinese and International Business Law and Associate Director, International Centre for Asian and Pacific Law, University of Sydney; Donald Clarke, David Weaver Research Professor of Law, The George Washington University Law School; Mark Cohen, Director, Asia IP and Technology Law Project, Berkeley Center for Law & Technology, University of California Berkeley School of Law; Lee Tzu-i, Postdoctoral Research Fellow, National University of Taiwan and Ministry of Science and Technology, Taiwan. Committee Co-Chair Martin Flaherty will moderate.

Committee on Islamic Law and Society

Committee Chair: Prof. Sahar Aziz (Rutgers Law School)

This Committee will sponsor a panel at International Law Weekend 2021 entitled “Commerce & Economics in Islamic Social Contexts: Past, Present & Future.” The panelists will be Mehmet Asutay, Professor of Middle Eastern and Islamic Political Economy and Finance, Department of Economics and Finance and Institute for Middle Eastern and Islamic Studies, Durham University; Nicholas H.D. Foster, formerly Senior Lecturer in Commercial Law, School of Law, SOAS University of London (retired) and Director, The Association for Comparative Legal Studies Limited; Abba Hasan, Associate Professor of Practice of Arab Language and Culture, University of Nebraska; Professor Maya Shatzmiller, Western University and Fellow of the Royal Society of Canada; and Kristen Stilt, Professor of Law and Director, Program on Law and Society in the Muslim World, Harvard Law School. Tabrez Ebrahim, Associate Professor, California Western School of Law, will moderate.

Committee on Law of the Sea

Committee Chair: Coalter G. Lathrop (Sovereign Geographic)

This Committee sponsored a panel at International Law Weekend 2020 entitled “Submarine Cables and Pipelines under International Law: The Ongoing Work of the ILA Committee.” The panel featured Danae Azaria, Associate Professor in Law, University College London and Co-Rapporteur, ILA Study Committee on Submarine Cables and Pipelines; Kent Bressie, Partner, Harris, Wiltshire & Grannis and Member, ILA Study Committee on Submarine Cables and Pipelines; Tara Davenport, Deputy Director, Asia-Pacific Centre for Environmental Law, Assistant Professor, Faculty of Law, National University of Singapore and Co-Rapporteur, ILA Study Committee on Submarine Cables and Pipelines; and Onni Irish, Senior Manager, Desktop Studies, Member, ILA Study Committee on Submarine Cables and Pipelines. Committee Chair Coalter Lathrop moderated.

At International Law Weekend 2021, the Committee will host a substantive meeting in the Networking Room.

Committee on the Legitimacy and Fundamental Principles of International Law

Committee Chair: Prof. Mortimer Sellers (University of Baltimore)

This Committee will co-sponsor a roundtable at International Law Weekend 2021 with the Committee on Customary International Law, entitled “Reinvesting in the Legitimacy and Fundamental Principles of Customary International Law.” The roundtable will seek to discover and reassert—or expose and criticize, if necessary—the fundamental principles that justify customary international law and support its legitimacy and power to regulate and constrain public action through law.

The panelists will be Noora Arajari, Associate for Research Ethics and Integrity, Hertie School, Berlin and Postdoctoral Researcher, Centre d'Histoire et Anthropologie du Droit, Université Paris Nanterre; Jean d'Aspremont, Professor of International Law, Sciences Po and Chair of Public International Law, University of Manchester; Omri Sender, Advisor and Litigator in Public International Law and former Assistant to the International Law Commission's Special Rapporteur on the Identification of Customary International Law; and Ingrid Brunk Wuerth, Helen Strong Curry Chair in International Law, Vanderbilt Law School. Committee Chair Mortimer Sellers will moderate.

Committee on Space Law

Committee Co-Chairs: Prof. Henry R. Hertzfeld (Elliott School of International Relations, The George Washington University) and Prof. Matthew Schaefer (University of Nebraska College of Law)

This Committee engaged with other space law groups and organizations over the past year as a co-sponsor of various space law events. These events included notably the World Speaks Space Series organized by the American Society of International Law Space Law Interest Group, which featured sessions on Europe, Australia/New Zealand, Latin America, and Africa with leading experts from academia, industry, and government elaborating on space law and policy views of numerous countries within these regions and cooperative efforts within international organizations. The Committee also co-sponsored the 14th Annual University of Nebraska Washington, D.C. Space Law Conference, which was delivered as an online Space Law Week due to COVID-19. Speakers from SpaceX,

Relativity Space, Redwire Space, Echostar, Lockheed Martin, as well as representatives from other organizations, law firms, and universities spoke on commercial space regulatory reform, spectrum management challenges, the Artemis Accords, and neutrality and proportionality in outer space. The World Speaks Space: Africa session also took place during the University of Nebraska Space Law Week.

Just prior to the Space Law Week, Committee Co-Chair Matthew Schaefer published an op-ed in the *Space News* on space regulatory reform and its impact on the Internet of Things and Industry 4.0. Committee Co-Chair Henry Hertzfeld coached the winning team in the North American rounds of the Lachs Moot Court Competition. In sum, this year was one where the Committee leveraged relationships to build programming in an online format. It looks forward to hosting an in-person panel at International Law Weekend 2022.

Committee on Teaching International Law

Committee Co-Chairs: Prof. Mark E. Wojcik (University of Illinois Chicago School of Law) and Prof. Milena Sterio (Cleveland-Marshall College of Law, Cleveland State University)

The name of this Committee has been changed from the “Committee on Teaching Public International Law” to the current name. It is working with the Association of American Law Schools International Law Section to organize a virtual mentoring panel for junior academics in the field of international law.

The Committee is organizing a panel at International Law Weekend 2021 entitled “The Meaning of Diversity, Equity and Inclusion in International Law.” The panel will feature Ambassador Namira Negm, Legal Counsel, African Union; Monica Pinto, Professor Emerita, University of Buenos Aires School of Law; and Daniel Stewart, Founder and Executive Director, Independent International Legal Advocates. Sohini Chatterjee, Presidential Appointee at the U.S. Department of State and Senior Policy Advisor to the U.S. Ambassador to the United Nations, will moderate.

Committee on United Nations Law

Committee Co-Chairs: Christiane Ahlborn (Codification Division, Office of Legal Affairs, United Nations) and Bart Smit Duijzentkunst (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations)

This Committee is organizing a panel at International Law Weekend 2021 entitled “International Organizations in the Digital Age,” which will discuss the role that international organizations may play in managing the risks of digitization in international relations while harnessing the attendant opportunities. The panel will feature Nemanja (Neno) Malisevic, Director, Digital Diplomacy, Microsoft; Megan Roberts, Director of Policy Planning, United Nations Foundation; Eneken Tikk, Senior Researcher, Institute of Software Sciences, Tallinn University of Technology and Fellow, Erik Castrén Institute, University of Helsinki; and Martin Waehlsch, Political Affairs Officer, U.N. Department of Political and Peacebuilding Affairs. Committee Co-Chair Christiane Ahlborn will moderate.

This Committee will also co-sponsor with the Committee on International Criminal Court a panel entitled “When Vetoes Enable Atrocity Crimes: What If the Security Council Were Not Blocked from

Acting When Faced with Atrocity Crimes?” to be held virtually on November 17, 2021 (discussed earlier).

Committee on the Use of Force

Committee Chair: Prof. Jack M. Beard (University of Nebraska College of Law)

Committee Chair Jack Beard is editor-in-chief of the forthcoming *Woomera Manual on the International Law of Military Space Operations*. The manual is scheduled to be published in 2022, and the Committee’s future work will include assembling an international panel of experts to discuss the key issue of what does or does not constitute a use of force in space.

The Committee sponsored a panel of distinguished experts at International Law Weekend 2020 entitled “From Accord back to Confrontation: The Return of the Iran Nuclear Crisis.” The panel considered the return of the international crisis concerning Iran’s nuclear program following the Trump Administration’s decision in 2018 to withdraw from the 2015 Joint Comprehensive Plan of Action. The increase in tension between Iran and the United States since the withdrawal has led to a dangerous standoff that has already produced military action on both sides. The panel discussed related international legal questions and the future of Iran’s nuclear program in the context of the conference theme of “International Law in Challenging Times.” The panel was co-moderated by Committee Chair Jack Beard and Deputy Committee Chair Dan Joyner, Elton B. Stephens Professor of Law and Director, International Programs, University of Alabama School of Law.

Four branch members (Professors Jack Beard, Mary Ellen O’Connell, Jennifer Trahan, and Brad Roth) have been actively participating in the ILA Committee on Use of Force, which is compiling a study on military intervention on request.

Study Group on Threats to the Liberal International Order

Study Group Chair: Prof. David L. Sloss (Santa Clara University School of Law)

The main output of this Study Group will be a book published by Oxford University Press. The book, with a working title *Is the International Legal Order Unraveling?*, consists of fourteen chapters written by members of the Study Group and an Introduction written by the Study Group Chair. The completed manuscript was submitted to the publisher on August 2, 2021, and the book is scheduled to be published in 2022.

American Branch Members on ILA Committees

Branch members continue to be active on ILA Committees. The following members are currently serving on those committees:

Committee on Complementarity in International Criminal Law: Prof. Leila Sadat

Committee on Global Health Law: Prof. Frederick Abbott (Co-Chair), Prof. Ryan Abbott, and Dr. Ruth Atherton

Committee on Human Rights in Times of Emergency: Prof. Christina Cerna (Co-Chair), Prof. William Aceves, Prof. Aaron Fellmeth, and Prof. Hurst Hannum

Committee on Implementation of the Rights of Indigenous Peoples (dissolved in December 2020): Prof. Dalee Dorrough (Co-Chair), Prof. Lorie Graham, and Prof. Siegfried Wiessner

Committee on Intellectual Property and Private International Law (dissolved in December 2020): Prof. Rochelle C. Dreyfuss, Prof. Jane C. Ginsburg, Prof. Marketa Trimble, and Prof. Peter K. Yu

Committee on International Commercial Arbitration: Hon. Charles Brower, Philip O'Neill, Prof. Louise Ellen Teitz, Prof. Ruth Wedgwood, Prof. Ved Nanda (Alternate), Prof. Andrea Bjorklund (Alternate), and Prof. Paul Dubinsky (Alternate)

Committee on International Law and Sea Level Rise: Prof. Maxine Burkett, Prof. Elizabeth Burleson, Prof. Sean Murphy, Captain J. Ashley Roach, and Dr. Anita Halvorssen (Alternate)

Committee on International Migration and International Law: No Branch representation

Committee on International Monetary Law: Thomas Baxter, Jr. (Vice-Chair), David Gross (Rapporteur), Lee Buchheit, James Freis, Prof. Cynthia Lichtenstein, and Ernest Patrikis

Committee on International Protection of Consumers: Prof. James Nehf

Committee on International Securities Regulation: Paul Stevens (Rapporteur), Edward Fleischman, and Prof. Cynthia Lichtenstein

Committee on International Tax Law: No Branch representation

Committee on Nuclear Weapons, Non Proliferation and Contemporary International Law: Prof. Larry Johnson

Committee on Participation in Global Cultural Heritage Governance: Prof. James Nafziger and Prof. Alison Renteln

Committee on Procedure of International Courts and Tribunals (dissolved in December 2020): Prof. Jeffrey Dunoff and Prof. Chiara Giorgetti

Committee on Protection of Privacy in Private International and Procedural Law: Dr. Cristina M. Mariottini (Co-Rapporteur), Prof. David P. Stewart, and Prof. Louise Ellen Teitz

Committee on Role of International Law in Sustainable Natural Resource Management for Development (dissolved in December 2020): Prof. Charles Marvin and Prof. Ved Nanda

Committee on Rule of Law and International Investment Law: Prof. Andrea Bjorklund (Co-Rapporteur), Prof. Jose Alvarez, and David Attanasio

Committee on Space Law: Rafael Moro Aguilar, Prof. Matthew Schaefer, and Prof. Frans von der Dunk

Committee on Submarine Cables and Pipelines under International Law: Captain J. Ashley Roach (Chair), Kent D. Bressie, Onni Irish, and Alice Colarossi Leonard de Juvigny

Committee on Sustainable Development and the Green Economy in International Trade Law: Gary Horlick, Amelia Porges, and Prof. Paolo Farah (Alternate)

Committee on the Use of Force: Military Assistance on Request: Prof. Jack M. Beard, Prof. Mary Ellen O'Connell, Prof. Jennifer Trahan, and Prof. Brad Roth (Alternate)

**2022 REPORT OF THE DIRECTORS OF STUDIES
JENNIFER TRAHAN AND PETER K. YU**

Committee on Arms Control and Disarmament

Committee Chair: Prof. Christopher Borgen (St. John's University School of Law)

This Committee has not been active and Committee Chair Christopher Borgen resigned just prior to International Law Weekend ("ILW") 2022. The Co-Directors of Studies will work to replace the position.

Committee on the Formation of Rules of Customary International Law

Committee Chair: Prof. Brian Lepard (University of Nebraska College of Law)

At ILW 2021, the Committee on the Formation of Customary International Law co-sponsored a panel with the newly-formed Committee on the Legitimacy and Fundamental Principles of International Law, chaired by Professor Mortimer Sellers. Entitled "Reinvesting in the Legitimacy and Fundamental Principles of Customary International Law," this panel was moderated by Professor Sellers. Other panelists were Noora Arajärvi, Associate for Research Ethics and Integrity, Hertie School, Berlin and Postdoctoral Researcher, Centre d'Histoire et Anthropologie du Droit, Université Paris Nanterre; Jean d'Aspremont, Professor of International Law, Sciences Po and Chair of Public International Law, University of Manchester; Omri Sender, Advisor and Litigator in Public International Law and former assistant to the International Law Commission's Special Rapporteur on the Identification of Customary International Law; and Ingrid Brunk Wuerth, Helen Strong Curry Chair in International Law, Vanderbilt Law School. The roundtable considered the legitimacy and fundamental principles of customary international law. It sought to discover and reassert (as well as expose and critique) the fundamental principles that justify customary international law and support its legitimacy and power to regulate and constrain public action through law.

The Committee also sponsored an online networking event at ILW 2021. Various new participants to the Committee's work, including students, expressed interest in joining the Committee and joined it afterwards.

At ILW 2022, this Committee sponsored a panel on the theme of "The Role of Customary International Law in the Next 100 Years." The panel critically examined what role customary international law can and should play in the next 100 years in light of an expanding universe of sources of law, with a particular focus on the fields of the international law of armed conflict, international human rights law, international space law, and cyber law. The panel was moderated by Committee Chair Brian Lepard. Other panelists were Rossana Deplano, Associate Professor, School of Law, University of Leicester; Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law and Director, Center for Global Legal Challenges, Yale Law School; Ezequiel Heffes, Senior Policy and Legal Advisor, Geneva Call, a humanitarian NGO; and Nathalie Weizmann, Senior Legal Officer with the United Nations Office for the Coordination of Humanitarian Affairs and former legal adviser to the International Committee of the Red Cross.

The Committee also held a networking event after the panel.

In the coming year, the Committee plans to continue work on a study of the status of international human rights law as customary international law. Committee Chair Brian Lepard is working on a prospectus for the study.

Committee on International Arbitration

Committee Co-Chairs: Floriane Lavaud (Debevoise & Plimpton LLP) and Daniel Reich (Shearman & Sterling LLP)

This report covers this Committee and the Committee on International Investment Law.

In the past year, the Committees jointly led an effort to publicize the ILW among the community of international arbitration and investment law practitioners. The Committees arranged for conference reporting on the ILW to be distributed to OGEMID, an email distribution list that reaches most practitioners in these areas globally. Following the event, the Committees also planned to publish summaries of key insights and takeaways on the Kluwer Arbitration Blog and/or the *Global Arbitration Review*.

As part of a longstanding effort to seek more engagement from this community of practitioners with the Branch's work, the Committees jointly published an article reviewing the panels from ILW 2021 that touched on our committees' mandates. The article is available at <https://globalarbitrationreview.com/article/reinvesting-in-international-law-five-key-takeaways>.

At ILW 2022, the Committees put together four panels, which were either directly sponsored or within the general ambit of their mandates:

1. "Coercive Diplomacy in the Skies: Dispute Resolution Mechanisms and Legal Remedies for States"

The panel's description was as follows: "In recent years, States have increasingly used the principle of airspace sovereignty as a tool of coercive diplomacy for reasons that are not always linked to aviation, ultimately threatening the stability of the Chicago Convention regime for international civil aviation established in 1944. For example, in 2017, a coalition of Gulf Cooperation Council (GCC) countries, including Egypt, imposed diplomatic and economic sanctions on Qatar, banning all Qatar-registered aircraft from entering or transiting their respective airspaces for almost four years. In 2021, the European Union banned all Belarussian aircraft from overflying and landing in EU territory in retaliation to the forced landing of Ryanair Flight 2978. Most recently, European and North American States have closed their airspace to Russian aircraft in response to the Russian invasion of Ukraine."

This panel considered the justifications and legal basis of airspace restrictions, the operational challenges they impose on airlines and air navigation providers, as well as the range of dispute settlement mechanisms that are currently available to States: from consultations and negotiations under the auspices of the International Civil Aviation Organization (ICAO), to formal proceedings before the ICAO Council and the International Court of Justice (ICJ), ad hoc arbitration, as well as claims based on racial discrimination.

2. "Accountability in Internet Governance"

The panel's description was as follows: "The Internet Corporation for Assigned Names and Numbers (ICANN) is a little-known multi-stakeholder organization that maintains and operates arguably the most important technological innovation in the last century: the Internet. ICANN not only decides how the Internet's vast web address system functions but also who can operate within the system. Yet, despite its vital importance to the entire international community, ICANN has no true governmental oversight; while state governments from around the world certainly participate in ICANN's multi-stakeholder process, no government can enforce any oversight over ICANN. The regulatory body is, essentially, in charge of itself. ICANN's recent efforts to revise its self-created accountability procedures only underscores the importance of this Panel's review and evaluation of ICANN's current accountability mechanisms. The finalization of these procedures has broad implications not only for the Internet community but also the international arbitral community because it establishes another international arbitration mechanism that can be adopted for other uses. These new procedures will also demonstrate, in the long term, the feasibility of amending recognized international arbitral rules to suit the unique requirements of an institution."

The Panel discussed whether ICANN's current accountability mechanisms are sufficient to hold the regulatory body accountable to the international Internet-using community, and will consider potential changes to ICANN's processes to ensure that the regulatory body complies with its obligations.

3. "The Vienna Convention on the Law of Treaties in Investor-State Disputes: History, Evolution, and Future"

The panel's description was as follows: "The Vienna Convention on the Law of Treaties (VCLT)—as the 'treaty on treaties'—has achieved a rich and nuanced track record of use in international law. It has also recently celebrated two important milestones: the 50th anniversary of its opening for signature (in 2019) and the 40th anniversary of its entry into force (in 2020). In the intervening decades, the VCLT has introduced profound influence in investor-State disputes, including a significant number of investor-State arbitration awards which directly engage with the VCLT. Looking forward to the next 100 years of international law, investor-State disputes present a key field of study for understanding the VCLT's contents and impact so that future opportunities for its continued relevance and use can be identified."

The panelists explored these themes by addressing emerging topics in a roundtable format. The topics included, among others, the VCLT and the status of intra-EU bilateral investment treaties; the VCLT and proposals for reform of the investor-State dispute settlement system, including the proposal of an appellate mechanism; the VCLT and the challenges presented by treaty conflict; and emerging opportunities to engage the VCLT in coming decades within the digital economy. This panel drew on ideas elaborated in the recently published book, *The Vienna Convention on the Law of Treaties in Investor-State Disputes: History, Evolution, and Future*, edited by Esmé Shirlow and Kiran Nasir Gore (Wolters Kluwer 2022).

4. "Controlling Misimplementation and Misuse of Global Anti-Money Laundering Standards"

The panel's description was as follows: "The past two years have witnessed important challenges from the potentially harmful unintended consequences of international efforts to combat money laundering and terrorist financing. Centered on the Financial Action Task

Force (‘FATF’), these international initiatives set non-binding international standards that are implemented at the domestic level by national governments. But some of the governments tasked with implementation have been accused of misimplementation or even of using the standards to lend a patina of legitimacy for crackdowns on civil society and otherwise to deny due process to those ultimately subject to the regulations. These challenges confronting the FATF have broad significance for the regulatory architecture for international banking and finance. Like the FATF, most intergovernmental bodies setting standards for this sector—including the Basel Committee on Banking Supervision and the International Organization of Securities Commissions—ultimately rely on national governments to adopt and apply those regulations. The space between those who create the standards and those who implement them opens the possibility for just this form of misinterpretation or abuse, because the commendable ideals and credibility of the former may be misused to serve other objectives of the latter.”

In addressing these challenges for the FATF, the Panel considered questions such as the following:

- a. How serious and extensive is the problem of the misimplementation or misuse of the FATF standards? Does the misuse have the potential to affect organizations beyond those of civil society?
- b. What actions can the FATF take to limit the unintended consequences of the standards that it creates and promulgates? Is the FATF well suited to preventing national governments from abusively implementing its standards?
- c. What other international mechanisms may also serve to control the abusive implementation of FATF standards? Are these international mechanisms adequate in light of the risks?
- d. What lessons for other international bodies that set standards for banking and finance may be drawn?

In the coming months, this Committee expects to organize further conferences aimed at drawing together practitioners and academics to discuss cutting-edge issues in international investment law and international arbitration.

Committee on International Commercial Law

Committee Co-Chairs: Prof. Irene Calboli (Texas A&M University School of Law) and Prof. Jessica R. Simonoff (Georgetown University Law Center)

This Committee sponsored a panel at ILW 2021 entitled “Sustainability and Ethical Trade in Times of Uncertainty: The Role of Corporate Social Responsibility Between Self-Regulation and Legal Obligations.” The panel featured Diana Verde Nieto, Co-Founder and CEO, Positive Luxury; Gail A. Lione, Senior Counsel, Dentons and Adjunct Professor, Georgetown University Law Center; and Brad Brooks-Rubin, Strategic Advisor, Responsible Jewellery Council. Co-moderated by Committee Co-Chairs Jessica Simonoff and Irene Calboli, this panel addressed the increasingly important topic of sustainability and its impact on the international supply chain.

Committee on the International Criminal Court

Committee Chair: Prof. Jennifer Trahan (NYU Center for Global Affairs) and Prof. Megan Fairlie (Florida International University College of Law)

This Committee is very sad to report the untimely passing of Co-Chair Megan Fairlie on December 27, 2022. A post honoring her was released on the Branch's website.

The Committee is pleased to welcome Rebecca Shoot, Senior Technical Adviser, ABA Rule of Law Initiative and Co-Convenor of the Washington Working Group for the ICC (WICC), as its new Advocacy Director.

This Committee sponsored a panel at ILW 2021 entitled "Renewing and Improving the United States' Relationship with the International Criminal Court." The panel featured Diane Orentlicher, former Deputy for War Crimes Issues, U.S. Department of State and Professor, American University Washington College of Law; David J. Scheffer, former U.S. Ambassador-at-Large for War Crimes Issues, U.S. Department of State and Clinical Professor Emeritus and Director Emeritus, Center for International Human Rights, Northwestern University Pritzker School of Law; and Clint Williamson, former U.S. Ambassador-at-Large for War Crimes Issues and Senior Director for International Rule of Law, Governance and Security, The McCain Institute. Committee Co-Chair Jennifer Trahan moderated the panel.

On November 5, 2021, the Committee co-sponsored an event entitled "Cyberattacks and the International Criminal Court's Rome Statute: Marking the Launch of a Report by the Council of Advisers on the Rome Statute and Cyberwarfare." Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations, delivered the keynote address. Pano Yannakogeorgos, Clinical Associate Professor and Program Director, M.S. in Global Security, Conflict and Cybercrime, NYU Center for Global Affairs, provided an overview. The panelists were Committee Co-Chair Jennifer Trahan; Oona A. Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law and Counselor to the Dean, Yale Law School; Charles C. Jalloh, Professor of Law, Florida International University School of Law and U.S. representative to the International Law Commission; and Claus Kress, Professor of International Law and Criminal Law, Chair for German and International Criminal Law, and Director of the Institute of International Peace and Security Law, University of Cologne and Ad Hoc Judge, International Court of Justice. Moderated by Noah Weisbord, Associate Professor, Queen's University School of Law, the panel was co-sponsored by NYU Center for Global Affairs, The Permanent Mission of Liechtenstein to the United Nations, and The Global Institute for the Prevention of Aggression (of which Committee Co-Chair Jennifer Trahan serves as Convenor).

With the Committee on the United Nations, The Committee also co-sponsored a panel entitled "When Vetoes Enable Atrocity Crimes: What If the Security Council Were Not Blocked from Acting When Faced with Atrocity Crimes?" The panel was held virtually on November 17, 2022, featuring Committee Co-Chair Jennifer Trahan; Ambassador Bob Rae, Permanent Representative, Mission of Canada to the United Nations; Ambassador Christian Wenaweser, Permanent Representative, Mission of Liechtenstein to the United Nations; and Ambassador Juan Ramón de la Fuente, Permanent Representative, Mission of Mexico to the United Nations. The panel was moderated by Andras Vamos-Goldman, formerly Founder and Executive Director, Justice Rapid Response and formerly Political Coordinator and Legal Adviser, Canadian Mission to the United Nations.

On July 29, 2002, the Committee sadly issued a Statement “Remembering the Legacy of John Washburn.” For many years, Washburn convened the American NGO Coalition for the International Criminal Court, co-founded the Washington Working Group on the International Criminal Court and the ICC Scholars Forum.

At ILW 2022, the Committee sponsored the panel “Prosecuting Sexual and Gender-Based Crimes at the ICC: An Expert Roundtable.” The panel featured Yvonne Dutton, Professor of Law, Indiana University Robert H. McKinney School of Law; Julie Fraser, Assistant Professor, Utrecht University, The Netherlands; Professor Valerie Oosterveld, Western University Faculty of Law; and Priya Pillai, Head, Asia Justice Coalition Secretariat. The panel was organized and moderated by Committee on Teaching International Law Chair Milena Sterio.

ICC Committee Co-Chair Jennifer Trahan also organized and moderated the ILW 2022 panel “Prosecuting the Crime of Aggression: Russia and Beyond?” The panel featured Committee on the Use of Force Chair Jack Beard; David Donat Cattin, Secretary-General, Parliamentarians for Global Action; Astrid Reisinger Coracini, Postdoctoral Researcher and Lecturer, University of Vienna; Ambassador David Scheffer, former U.S. Ambassador-at-Large for War Crimes Issues, U.S. Department of State; and Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations.

Committee on International Environmental and Energy Law

Committee Co-Chairs: Prof. Carolina Arlota (Sabin Center for Climate Change Law, Columbia Law School) and Myanna Dellinger (EinStrong Foundation)

This Committee sponsored a panel discussing the crucial role of science in informing the need for meaningful reduction of greenhouse gases and collaborative action among all countries against climate change. Entitled “Beyond Rocket Science: Assessing the Role of Natural and Social Sciences in Galvanizing International Climate Action,” the panel featured Committee Co-Chair Carolina Arlota; Tibisay Morgandi, Assistant Professor in International Energy Law, School of Law, Queen Mary University of London; Gudny Nielsen, CEO and Co-founder, SoGreen; Frédéric G. Sourgens, Senator Robert J. Dole Distinguished Professor of Law and Director, Washburn Oil and Gas Law Center, Washburn University School of Law. Committee Co-Chair Myanna Dellinger joined the panel as both a presenter and its moderator.

The Committee and the Committee on the Law of the Sea co-hosted a networking room at ILW 2022. Committee Co-Chair Arlota, who served on the organizing committee of ILW 2022, was involved in the Branch’s effort in maximizing young and emerging voices at the ILW and beyond. Committee Co-Chair Myanna Dellinger continues to advance international environmental and energy law research and awareness in her work at the EinStrong Foundation and through her Branch-sponsored podcast (<http://theglobalenergyandenvironmentallaw.podbean.com>).

The Committee Co-Chairs welcomed new members and helped streamline research interests and topics for ILW 2022 and future Committee endeavors.

Committee on International Human Rights

Committee Chair: Prof. Aaron X. Fellmeth (Sandra Day O'Connor College of Law, Arizona State University) and Prof. W. Warren Binford (School of Medicine, University of Colorado)

In 2022, the Committee added Warren Binford as a Co-Chair to help keep the Committee active and relevant to its membership. Professor Binford is an international children's rights expert and serves as the inaugural W.H. Lea Chair in Pediatric Law, Policy & Ethics at the University of Colorado. She chaired the International Law Association's first study group on children's rights and is currently co-chairing its first committee in the area. The Committee Co-Chairs have worked together previously and are excited to have this opportunity to resume their collaboration.

The Committee sponsored two panels at ILW 2022. The first, submitted and moderated by Committee Co-Chair Warren Binford, was entitled "Growing Threats to the Human Rights of U.S. Transgender & Intersex Children." Panelists were Michael Garcia Bochenek, Senior Counsel, Children's Rights Division, Human Rights Watch; Mary Kelly Persyn, Attorney; and Zephyr Eslick-Persyn, Transgender Youth Rights. Unfortunately, the pediatric medical provider who was scheduled to serve on the panel had to withdraw under order from his employer due to the widespread threats targeting healthcare professionals providing gender-affirming care.

The second panel, co-sponsored by this Committee and the Committee on the Legitimacy and Fundamental Principles of International Law, was entitled "The Legitimacy and Fundamental Principles of International Human Rights Law." The panel description was as follows:

The respect for and protection of universal human rights has long been seen as one of the primary tests and measures of the legitimacy of law and government everywhere. Already in the time of Grotius and Vattel, but with increasing sophistication and frequency since the Second World War, lawyers have cited universal rights and international legal standards to challenge oppressive Empires and States. Yet at the same time, strong traditions of realism and positivism in international relations have threatened the legal status of individual rights, to elevate the power and sovereignty of States at the expense of their subjects. This panel will consider the legitimacy and fundamental principles of international human rights law, the sources and evidence of human rights, their binding power, and the possible role human rights protections play in supporting the legitimacy of international law and international legal institutions as a whole.

The panelists were Committee Co-Chair Aaron Fellmeth; Diane Marie Amann, Regents' Professor of International Law and Co-Director, Dean Rusk International Law Center, University of Georgia School of Law; Helene Ruiz Fabri, Director, Max Planck Institute Luxembourg for International, European and Regulatory Procedural Law; Gloria Y. A. Ayee, Lecturer and Senior Research Fellow, Department of Government, Harvard University. The moderator was Committee on the Legitimacy and Fundamental Principles of International Law Chair Mortimer Sellers.

In future years, this Committee will continue to organize panels for the ILW. In addition, the Subcommittee on Gun Violence and Human Rights will continue to pursue research and coordinated action regarding gun violence and human rights in the United States. The Working Group on Consumer Protection and Human Rights will continue to conduct research on a white paper on human rights and consumer protection. In anticipation of the 100th Anniversary of Children's Rights

in 2024, the Committee plans to organize activities in 2023 to commemorate this forthcoming milestone.

Committee on International Humanitarian Law

Committee Co-Chairs: Prof. Gabor Rona (Benjamin N. Cardozo School of Law, Yeshiva University) and Ashika Singh (Debevoise & Plimpton LLP)

At ILW 2022, this Committee sponsored a panel entitled “The Cybercrime-Cyberwar Continuum: State Responsibility and Accountability for Cyberattacks under International Law.” The panel brought together leading experts and practitioners from the fields of cyber and humanitarian law to examine critical legal questions that arise when different actors carry out cross-border cyber operations for different purposes—from financially motivated “cybercrime” to hybrid, cyber-kinetic “warfare.” With attention to real-world case studies, the panel considered the factors that might bring a cyberattack within the scope of international humanitarian law and explore unanswered questions of State responsibility and accountability for different types of cyber operations, including those carried out by “private” actors. The participants included Sina Alavi, Senior Legal and Political Adviser, Permanent Mission of Liechtenstein to the United Nations; Professor Kristen Eichensehr, University of Virginia School of Law; Kimberley Raleigh, Deputy Chief, Office of Law and Policy, National Security Division, U.S. Department of Justice; Dr. Tilman Rodenhäuser, Legal Adviser, International Committee of the Red Cross; and Professor Annita Larissa Sciacovelli, University of Bari Aldo Moro. Committee Co-Chair Ashika Singh and Michael Pizzi, an associate from Debevoise & Plimpton LLP, co-moderated the panel.

The Committee also hosted a networking room at ILW 2022.

Committee on International Intellectual Property

Committee Co-Chairs: Prof. Sean Flynn (American University Washington College of Law) and Prof. Peter K. Yu (Texas A&M University School of Law)

This Committee sponsored a panel entitled “Debating a WTO TRIPS Waiver for COVID” at ILW 2021. Held in the run-up to the 12th WTO Ministerial Conference in Geneva, this timely panel brought together leading intellectual property experts to explore the process and politics surrounding the proposal from India and South Africa for a waiver of select provisions in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights to promote the prevention, treatment, and containment of COVID-19. The participants included J. Janewa OseiTutu, Associate Professor of Law, Florida International University College of Law; Srividhya Ragavan, Professor of Law and Director, India Program, Texas A&M University School of Law; Sharon Sandeen, Robins Kaplan Distinguished Professorship in Intellectual Property Law and Director, Intellectual Property Institute, Mitchell Hamline School of Law; and Joshua Sarnoff, Professor of Law, DePaul University College of Law. Committee Co-Chairs Sean Flynn and Peter Yu co-moderated the panel.

At ILW 2022, the Committee sponsored a panel entitled “100 Years of International Intellectual Property Law.” The panel brought together leading scholars to explore the development of the international intellectual property regime in the past 100 years. It explored the regime’s most transformative and overlooked developments as well as its past and future trajectories. The participants included Committee Co-Chair Peter Yu; Frederick M. Abbott, Edward Ball Eminent

Scholar Professor of International Law, Florida State University College of Law; Rochelle C. Dreyfuss, Pauline Newman Professor of Law Emerita and Co-Director, Engelberg Center on Innovation Law & Policy, New York University School of Law; J. Janewa OseiTutu, Professor of Law and Associate Dean for Diversity Culture & Inclusion, Florida International University College of Law; Sarah R. Wasserman Rajec, Professor of Law, William & Mary Law School. Committee Co-Chair Sean Flynn moderated the panel.

Committee on International Investment Law

Committee Co-Chairs: David Attanasio (Dechert LLP) and Diora Ziyaeva (Dentons)

See the earlier joint report submitted by the Committee on International Arbitration and this Committee.

Committee on International Law in Domestic Courts

Committee Co-Chairs: Prof. Martin Flaherty (Fordham University Law School and Princeton University) and Prof. Steven M. Schneebaum (Steven M. Schneebaum, P.C. and Johns Hopkins School of Advanced International Studies)

In the past year, this Committee continued to solicit its members for ideas and conduct outreach for new members.

At ILW 2022, the Committee cosponsored a panel on “Is U.S. Ratification of Human Rights Treaties Obsolete?” The panel was moderated by Jamil Dakwar, Director, Human Rights Program, American Civil Liberties Union and Professor, Hunter College. The panelists were Martha Davis, University Distinguished Professor of Law and Co-Director, Program on Human Rights and the Global Economy, Northeastern University School of Law; David Kaye, Clinical Professor of Law, Director, International Justice Clinic, and Co-Director, Fair Elections and Free Speech Center, University of California, Irvine School of Law; Gay McDougall, Member, U.N. International Committee on the Elimination of Racial Discrimination and Distinguished Scholar-in-Residence, Leitner Center for International Law, Fordham Law School; and Mariana Olaizola Rosenblat, Policy Advisor on Technology and Law, Stern Center for Business and Human Rights, New York University.

In the near future, this Committee plans to convene panels on accountability in Ukraine and on the use of international law in urgent human rights situations, such as Northern Ireland and Hong Kong.

Committee on International Trade Law

Committee Chair: Prof. Richard Steinberg (UCLA School of Law)

This Committee sponsored and organized a panel on “The International Trade Regime’s Foundations in an Era of Increased Geopolitical Conflict” at ILW 2022. The panel surveyed developments in international trade law associated with recent and ongoing geopolitical shifts, including Russia’s invasion of Ukraine and China’s revisionist rhetoric and behavior. It offered a range of views on present and future trade policy and implications for the global architecture of trade. The panelists were Committee Chair Richard Steinberg; Kathleen Claussen, Associate Professor of Law, University of Miami School of Law; Sergio Puig, Evo DeConcini Professor of Law, University of Arizona; and Kelly

Ann Shaw, Partner, Hogan Lovells, Washington, D.C. The panel was moderated by Committee on Space Law Co-Chair Matthew Schaefer.

Committee on Islamic Law and Society

Committee Chair: Prof. Sahar Aziz (Rutgers Law School)

This Committee sponsored a panel at ILW 2021 entitled “Commerce & Economics in Islamic Social Contexts: Past, Present & Future.” The panelists were Mehmet Asutay, Professor of Middle Eastern and Islamic Political Economy and Finance, Department of Economics and Finance and Institute for Middle Eastern and Islamic Studies, Durham University; Nicholas H.D. Foster, formerly Senior Lecturer in Commercial Law, School of Law, SOAS University of London (retired) and Director, The Association for Comparative Legal Studies Limited; Abla Hasan, Associate Professor of Practice of Arab Language and Culture, University of Nebraska; Professor Maya Shatzmiller, Western University and Fellow of the Royal Society of Canada; and Kristen Stilt, Professor of Law and Director, Program on Law and Society in the Muslim World, Harvard Law School. Tabrez Ebrahim, Associate Professor, California Western School of Law, moderated the panel.

Committee on Law of the Sea

Committee Chair: Coalter G. Lathrop (Sovereign Geographic)

During 2021, this Committee hosted a virtual networking meeting during which Committee member Cymie Payne led a discussion on the process, goals, and obstacles related to the Intergovernmental Conference on Marine Biodiversity in Areas beyond National Jurisdiction.

At ILW 2022, the Committee sponsored a panel entitled “‘Whose Is the Bed of the Sea?’ 1922–2022 and Beyond.” The panel addressed the past, present, and future of ownership over, benefits from, and control of seabed and subsoil of the continental shelf and deep seabed. The participants included Seline Trevisanut, Professor of International Law and Sustainability, Utrecht University School of Law; Cymie Payne, Associate Professor, Rutgers Law School and Chair, Ocean Law Group, International Union for Conservation of Nature–World Commission on Environmental Law; and Kevin Baumert, Legal Counsel, U.S. Extended Continental Shelf Project, U.S. Department of State. Committee Chair Coalter Lathrop moderated the panel.

During the 80th ILA Biennial Conference in Lisbon, the Committee on Submarine Cables and Pipelines under International Law and the Committee on International Law and Sea Level Rise submitted interim reports. Four Branch members (J. Ashley Roach, Kent D. Bressie, Onni Irish, and Sean Murphy) have been involved in these ILA Committees over the years.

Committee on the Legitimacy and Fundamental Principles of International Law

Committee Chair: Prof. Mortimer Sellers (University of Baltimore)

During 2021 and 2022, this Committee continued its effort to strengthen the value and legitimacy of international law by identifying the fundamental principles that support and justify the international legal order, making practitioners more aware of their content, and identifying and promoting the justice of international legal institutions. More specifically, the Committee continued its systematic

review of the different areas of international law, addressing their legitimacy and fundamental principles in cooperation with subject experts.

The Committee's focus in 2021 was on customary international law. At ILW 2021, it organized a panel on "The Legitimacy and Fundamental Principles of Customary International Law." The panel was developed in co-operation with the Committee on Customary International Law (see above).

The Committee's focus in 2022 was on international human rights law. At ILW 2022, the Committee organized a panel on "The Legitimacy and Fundamental Principles of International Human Rights Law." The panel was developed in cooperation with the Committee on International Human Rights (see above).

The Committee plans to continue this format of cooperation with other Branch Committees in future years.

Committee on Space Law

Committee Co-Chairs: Prof. Henry R. Hertzfeld (Elliott School of International Relations, The George Washington University) and Prof. Matthew Schaefer (University of Nebraska College of Law)

At ILW 2022, this Committee co-sponsored a panel along with the Committee on International Trade Law. Committee Co-Chair Matthew Schaefer co-organized with Committee on International Trade Law Chair Richard Steinberg a panel entitled "The International Trade Regime's Foundations in an Era of Increased Geopolitical Conflict" (see above). This panel continued the Committee's long tradition of working with other committees to co-sponsor ILW panels on occasion, such as prior co-sponsorship with the Committee on Law of the Sea and the Committee on the Use of Force.

This Committee continued its tradition of co-sponsoring the University of Nebraska's Annual D.C. Conference, which was back in person in October 2022 at the Army & Navy Club across the street from the White House. Professor Schaefer moderated the keynote address discussion by two University of Nebraska adjunct law professors—Dennis Burnett, Executive Vice-President and General Counsel, Hawkeye 360; and Franceska Schroeder, Managing Principal, Schroeder Law. Professor Schaefer also moderated the commercial space panel, which featured Caryn Schenewerk, Relativity Space; Kristin Price, Blue Origin; Meg Vernal, Voyager Space; and Frans von der Dunk, Harvey and Susan Perlman Alumni and Othmer Professor of Space Law, University of Nebraska College of Law. In addition, Committee on the Use of Force Chair Jack Beard moderated a panel on rendezvous and proximity operations.

The Branch is indirectly involved in a number of other conferences through the activities of committee leadership. Professor Schaefer spoke on the legal and regulatory panel at Morrison Foerster's Sovereign Investor Conference in New York City on October 18, 2022, along with Thomas Ayres, Chief Legal Officer, Voyager Space; Karina Drees, President, Commercial Space Flight Federation; and Emily Pierce, Attorney-Advisor, U.S. Department of State. On August 15, 2022, Professor Schaefer served as a discussant for space law papers at the online "Four Societies" conference, jointly organized by the American Society of International Law, the Canadian Council of International Law, the Australia-New Zealand Society of International Law, and the Japan Society of International Law. In addition, Professor Schaefer spoke at the annual conference of the International Bar Association on November 1, 2022, and served as a discussant at the American Society of International Law Research Forum meeting on November 12, 2022.

This Committee is already making plans for ILW 2023, working in conjunction with law firms in New York City for a panel proposal. In the coming months, the Committee may also work with industry in submitting comments to the White House Space Council and/or UNCOPUOS, an international forum facilitated by the United Nations Office of Outer Space Affairs.

Committee on Teaching International Law

Committee Chair: Prof. Milena Sterio (Cleveland-Marshall College of Law, Cleveland State University)

In July 2022, Mark Wojcik (University of Illinois Chicago School of Law) stepped down from the Committee Co-Chair's position.

On November 2, 2022, this Committee co-sponsored a panel on "Teaching Transitional Justice," which was organized by the American Society of International Law Transitional Justice and Rule of Law Interest Group. The panel featured Colleen Murphy, Roger and Stephany Joslin Professor of Law, University of Illinois College of Law; Umut Özsü, Associate Professor of Law and Legal Studies, Carleton University; and Helen Scanlon, Convenor, Justice and Transformation Programme, University of Cape Town. Noha Aboueldahab, Assistant Professor, Georgetown University in Qatar, moderated the panel. Featuring scholars who teach transitional justice at universities and in varied classroom settings, the panel discussed how the specific classroom context within which transitional justice is taught shapes the ways in which professors teach the topic. It also covered the content of the course(s), challenges and/or unexpected opportunities professors have faced while teaching transitional justice, and best practices for teaching transitional justice in varied contexts. In addition, the discussion considered how the personal and professional backgrounds of teachers of transitional justice shape the ways in which they teach the topic. Finally, the discussion offered an opportunity for current and recent students of transitional justice to share experiences on how they were taught transitional justice.

The Committee will co-sponsor a pedagogy program at the AALS 2023 Annual Meeting in San Diego on January 6, 2023.

Committee Chair Milena Sterio also organized the ILW 2022 panel on "Prosecuting Sexual and Gender-Based Crimes at the ICC: An Expert Roundtable" (see above).

Committee on United Nations Law

Committee Co-Chairs: Christiane Ahlborn (Codification Division, Office of Legal Affairs, United Nations) and Bart Smit Duijzentkunst (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations)

This Committee organized a panel at ILW 2021 entitled "International Organizations in the Digital Age." The panel discussed the role that international organizations may play in managing the risks and harnessing the opportunities of digitalization. The panelists were Nemanja Malisevic, Director, Digital Diplomacy, Microsoft; Megan Roberts, Director of Policy Planning, U.N. Foundation; Eneken Tikk, Senior Researcher, Institute of Software Sciences, Tallinn University of Technology and Fellow, Erik Castrén Institute of International Law and Human Rights, University of Helsinki; and Martin Wachlisch, Team Leader, Innovation Cell, U.N. Department of Political and Peacebuilding Affairs. The panel was moderated by Committee Co-Chair Christiane Ahlborn.

At ILW 2022, the Committee sponsored a panel on “Negotiating the Sustainable Future of Marine Biological Diversity in Areas beyond National Jurisdiction.” This panel explored the issues at stake, positions and challenges in the negotiations surrounding a treaty on marine biodiversity in the high seas and international seabed area beyond national jurisdiction. The panel was moderated by Daniel Stewart, Founder and Executive Director, Independent International Legal Advocates. It featured Florian Jean Patrice, Botto First Secretary, Permanent Mission of the Principality of Monaco to the United Nations; Yolannie Cerrato, Deputy Permanent Representative, Permanent Mission of Honduras to the United Nations; Ambassador Osman Keh Kamara, Special Adviser, Commissioner for Peace and Security on Silencing the Guns, African Union; Ambassador Michael Imran Kanu, Deputy Permanent Representative (Legal Affairs), Permanent Mission of Sierra Leone to the United Nations; and Clement Yow Mulalap, Legal Adviser, Permanent Mission of the Federated States of Micronesia to the United Nations.

Committee on the Use of Force

Committee Chair: Prof. Jack M. Beard (University of Nebraska College of Law)

This Committee sponsored the ILW 2022 panel on “Prosecuting the Crime of Aggression: Russia and Beyond?” (see above).

Committee Chair Jack Beard and Branch members Mary Ellen O’Connell, Brad Roth, and Jennifer Trahan have been active at the ILA Committee on the Use of Force: Military Assistance on Request. All four attended the May 2022 committee meeting in Graz, Austria, either in person or remotely. Trahan and O’Connell presented at the meeting.

Study Group on Threats to the Liberal International Order

Study Group Chair: Prof. David L. Sloss (Santa Clara University School of Law)

The Branch approved this Study Group in January 2019 with a limited mandate: to produce an edited volume with a collection of essays on this topic. Oxford University Press published this volume in November 2022 under the title *Is the International Legal Order Unraveling?*

The book includes 14 chapters written by a total of 16 contributing authors. The contributing authors are Maxine Burkett, Kathleen Claussen, Laura Dickinson, James Gathii, Tom Ginsburg, Chris Jenks, Ido Kilovaty, Sergio Puig, Jeremy Rabkin, Jay Ramji-Nogales, Leila Sadat, Wayne Sandholtz, Richard Steinberg, Paul Stephan, Lauren Sukin, and Allen Weiner. The chapters by contributing authors address a broad range of topics related to the future of the international legal order. Additionally, the book includes an analytical introduction written by Study Group Chair David Sloss, who served as the book’s editor.

In the coming months, the Study Group Chair plans to engage in a variety of activities to help promote the book.

American Branch Members on ILA Committees

Branch members continue to be active on ILA Committees. The following members are currently serving on those committees:

Committee on Alternative Dispute Resolution in International Law: Amy Porges (Co-Rapporteur)

Committee on Complementarity in International Criminal Law (dissolved in June 2022): Prof. Leila Sadat

Committee on Enforcing the Rights of Children in Migration: Prof. Warren Binford (Chair)

Committee on Global Health Law: Prof. Frederick Abbott (Co-Chair), Prof. Ryan Abbott, and Dr. Ruth Atherton

Committee on Human Rights in Times of Emergency: Prof. Christina Cerna (Co-Chair), Prof. William Aceves, Prof. Aaron Fellmeth, and Prof. Hurst Hannum

Committee on International Commercial Arbitration (dissolved in June 2022): Hon. Charles Brower, Philip O'Neill, Prof. Louise Ellen Teitz, Prof. Ruth Wedgwood, Prof. Ved Nanda (Alternate), Prof. Andrea Bjorklund (Alternate), and Prof. Paul Dubinsky (Alternate)

Committee on International Law and Sea Level Rise: Prof. Maxine Burkett, Prof. Elizabeth Burleson, Prof. Sean Murphy, Captain J. Ashley Roach, and Dr. Anita Halvorssen (Alternate)

Committee on International Migration and International Law: Prof. James Nafziger and Prof. Jaya Ramji-Nogales

Committee on International Monetary Law: Thomas Baxter, Jr. (Vice-Chair), David Gross (Rapporteur), Lee Buchheit, James Freis, Prof. Cynthia Lichtenstein, and Ernest Patrikis

Committee on International Protection of Consumers: Prof. James Nehf

Committee on International Securities Regulation: Paul Stevens (Rapporteur), Edward Fleischman, and Prof. Cynthia Lichtenstein

Committee on International Tax Law: No Branch representation

Committee on Nuclear Weapons, Non Proliferation and Contemporary International Law (dissolved in June 2022): Prof. Larry Johnson

Committee on Participation in Global Cultural Heritage Governance (dissolved in June 2022): Prof. James Nafziger and Prof. Alison Renteln

Committee on Protection of Privacy in Private International and Procedural Law (dissolved in June 2022): Dr. Cristina M. Mariottini (Co-Rapporteur), Prof. David P. Stewart, and Prof. Louise Ellen Teitz

Committee on Rule of Law and International Investment Law: Prof. Andrea Bjorklund (Co-Rapporteur), Prof. Jose Alvarez, and David Attanasio

Committee on Space Law: Rafael Moro Aguilar, Prof. Matthew Schaefer, and Prof. Frans von der Dunk

Committee on Submarine Cables and Pipelines under International Law: Captain J. Ashley Roach (Chair), Kent D. Bressie, Onni Irish, and Alice Colarossi Leonard de Juvigny (Alternate)

Committee on Sustainable Development and the Green Economy in International Trade Law (dissolved in June 2022): Gary Horlick, Amelia Porges, and Prof. Paolo Farah (Alternate)

Committee on the Use of Force: Military Assistance on Request: Prof. Jack M. Beard, Prof. Mary Ellen O'Connell, Prof. Jennifer Trahan, and Prof. Brad Roth (Alternate)

**2023 REPORT OF THE DIRECTORS OF STUDIES
JENNIFER TRAHAN AND PETER K. YU**

Committee on Arms Control and Disarmament

Committee Chair: Luis Fortuño (Steptoe & Johnson LLP)

This Committee welcomed Luis Fortuño as its new Chair. At International Law Weekend (“ILW”) 2023, some of the Committee members met and agreed to explore potential topics for an article and a virtual meeting in the first quarter of 2024.

Committee on the Formation of Rules of Customary International Law

Committee Chair: Prof. Brian Lepard (University of Nebraska College of Law)

At ILW 2023, this Committee sponsored a panel entitled “Customary International Law and Beyond: What Is Its Unique Role in Facilitating Global Cooperation?” The panel explored the special character, and limits, of customary international law in relation to other modalities of cooperation by examining it through various interdisciplinary lenses, including those offered by political science, history, ethics, and religion. The panelists examined case studies that included customary international law norms relating to space resource utilization and the slave trade. The panelists were Rossana Deplano, Associate Professor, School of Law, University of Leicester; Mark W. Janis, William F. Starr Professor of Law, University of Connecticut School of Law; and Jocelyn Getgen Kestenbaum, Clinical Associate Professor Law, Benjamin N. Cardozo School of Law, Yeshiva University. The Committee Chair moderated the panel. The Committee also hosted a networking room.

Committee on International Arbitration

Committee Co-Chairs: Floriane Lavaud (Debevoise & Plimpton LLP) and Daniel Reich (Shearman & Sterling LLP)

At ILW 2023, this Committee sponsored a panel entitled “Empowering the UN Security Council: Reforms to Address Modern Threats.” The panelists were Ambassador Juan Manuel Gómez-Robledo, Deputy Permanent Representative of Mexico to the United Nations; Ian Johnstone, Professor of International Law, The Fletcher School, Tufts University; Mona Ali Khalil, Founder, MAK Law International, and former Senior Legal Officer, U.N. Office of the Legal Counsel; and Ambassador Alexander Marschik, Permanent Representative of Austria to the United Nations. The panel was moderated by Committee Co-Chair Floriane Lavaud.

Committee on International Commercial Law

Committee Chair: Prof. Irene Calboli (Texas A&M University School of Law)

This Committee did not provide a report.

Committee on the International Criminal Court

Committee Co-Chairs: Prof. Jennifer Trahan (NYU Center for Global Affairs) and Prof. Patrick Keenan (University of Illinois College of Law)

At ILW 2023, this Committee and the Committee on International Humanitarian Law co-sponsored a panel entitled “Russia & Ukraine: A Springboard or a Setback for International Accountability?” The panelists were Ambassador (ret.) Hans Corell, the former Under Secretary-General for Legal Affairs and Legal Counsel of the United Nations; Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law and Counselor to the Dean, Yale Law School; Ambassador Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations; and Committee Co-Chair Jennifer Trahan. The panel moderator was Prof. Gabor Rona, Benjamin N. Cardozo School of Law, Yeshiva University. The Committee also hosted a networking room.

On August 23, 2023, the Committee released a report entitled *Five Recommendations for Resetting the U.S./ICC Relationship*. The report advocates that (1) the United States should fully cooperate with the investigation by the International Criminal Court (ICC) in the situation of Ukraine; (2) the United States should remove impediments to assisting the ICC in situations other than Ukraine; (3) the United States should take practical steps toward cooperation with the ICC, such as providing expertise and material support for witness protection and relocation; (4) the United States should formally and fully re-commit to its obligations as a signatory to, and work toward eventual ratification of, the ICC’s Rome Statute; and (5) the United States should provide financial support to the ICC’s Trust Fund for Victims. The report’s full text is available at <https://www.ila-americanbranch.org/wp-content/uploads/2023/08/ICC-Committee-Statement-Aug.2023.pdf>.

Committee on International Environmental and Energy Law

Committee Co-Chairs: Prof. Carolina Arlota (Sabin Center for Climate Change Law, Columbia Law School) and Myanna Dellinger (EinStrong Foundation)

At ILW 2023, this Committee sponsored a panel entitled “Can International Law Give a Boost to the Energy Transition? Challenges and Possibilities.” With engaging topics that included on-the-spot questions from the audience throughout its duration, the panel provided a rich and insightful discussion. It featured Freya Doughty-Wagner, J.S.D. Candidate, Washington University School of Law; Tibusay Morgandi, Associate Professor of International Energy Law, Queen Mary, University of London; Frédéric Gilles Sourgens, James McCulloch Chair in Energy Law and Director, Center for Energy Law, Tulane University Law School; and Committee Co-Chair Carolina Arlota. Committee Co-Chair Myanna Dellinger moderated the panel.

In addition, the Committee hosted a networking room during ILW 2023, and Committee Co-Chair Carolina Arlota co-hosted a Young Professionals networking room. The Committee Co-Chairs also welcomed new members to the Committee and brainstormed with Committee members about future events and how the Committee can further advance its mission.

Committee on International Human Rights

Committee Chair: Prof. Aaron X. Fellmeth (Sandra Day O’Connor College of Law, Arizona State University) and Prof. W. Warren Binford (Willamette University College of Law)

At ILW 2023, this Committee sponsored a panel entitled “Negotiating a Torture-Free Trade Treaty.” The panelists were Laura Auger-Pérez, Senior Expert, Service for Foreign Policy Instruments, European Commission; and Verity Coyle, Senior Campaigner/Advisory, Amnesty International. Committee Co-Chair Aaron Fellmeth moderated the panel.

The Committee will continue organizing panels for the ILW in future years. In addition, the Subcommittee on Gun Violence and Human Rights will continue to pursue research and coordinated action regarding gun violence and human rights in the United States. The Working Group on Consumer Protection and Human Rights has been disbanded for inactivity, but the Committee is in the process of forming two new units: a Subcommittee on Children's Rights, under Warren Binford's leadership, and a Subcommittee on Refugee and Migrant Rights. The latter has one co-chair, Jonathan Hafetz, and is seeking a second co-chair.

In view of the 100th Anniversary of Children's Rights in 2024, Committee Co-Chair Warren Binford has asked to be on the organizing committee of ILW 2024. She hoped to work with the Organizing Committee and the Subcommittee on Children's Rights to arrange panels and secure a keynote speaker.

Committee on International Humanitarian Law

Committee Co-Chairs: Prof. Gabor Rona (Benjamin N. Cardozo School of Law, Yeshiva University) and Ashika Singh (Debevoise & Plimpton LLP)

At ILW 2023, this Committee and the Committee on the International Criminal Court co-sponsored a panel entitled "Russia & Ukraine: A Springboard or a Setback for International Accountability?" (see above). It also hosted a networking room.

On November 15, 2023, the Committee and the Institute on Holocaust and Human Rights at Benjamin N. Cardozo School of Law, Yeshiva University, co-sponsored a virtual event on the new Ljubljana/The Hague Convention on International Cooperation in the Investigation and Prosecution of the Crime of Genocide, Crimes against Humanity, War Crimes and Other International Crimes. The panelists were Ezéchiél Amani Cirimwami, Professor of International Law, University of Kinshasa, Democratic Republic of Congo, and Guest Professor of International Law, Vrije Universiteit Brussels and Royal Military Academy of Belgium; Vaïos Koutroulis, Professor of Public International Law, Faculty of Law and Criminology, Université Libre de Bruxelles; Marko Rakovec, Director General for International Law and Protection of Interests, Ministry of Foreign Affairs, Republic of Slovenia; and Raquel Saavedra, International Legal Adviser, International Commission of Jurists' Accountability Initiative. The panel was moderated by Committee Co-Chair Gabor Rona.

Committee on International Intellectual Property

Committee Co-Chairs: Prof. Sean Flynn (American University Washington College of Law) and Prof. Peter K. Yu (Texas A&M University School of Law)

At ILW 2023, this Committee sponsored a panel entitled "Beyond Multilateral Intellectual Property Law." The panel discussed how the multilateral intellectual property system—managed primarily through the World Intellectual Property Organization and, since 1994, also the World Trade Organization—necessarily interfaces with and often lags behind other policy fora in addressing key policy issues. The panelists were Margaret Chon, Donald and Lynda Horowitz Endowed Chair for the Pursuit of Justice, Seattle University School of Law; Aman Gebru, Assistant Professor, University of Houston Law Center; Michal Shur-Ofry, Associate Professor, Faculty of Law, The Hebrew University of Jerusalem, Israel; and Committee Co-Chair Peter Yu. Committee Co-Chair Sean Flynn moderated the panel.

Committee on International Investment Law

Committee Co-Chairs: David Attanasio (Dechert LLP) and Dora Ziyeva (Dentons)

This Committee sponsored a panel entitled “Investment Law and Energy in Times of Armed Conflict.” The panelists were Arif Ali, Partner, Dechert LLP; Michael D. Nolan, Independent Arbitrator, Arbitration Chambers; and Committee Co-Chair Dora Ziyeva. The panel was organized and moderated by Guillermo J. Garcia Sanchez, Associate Professor of Law, Texas A&M University School of Law. The Committee also hosted a networking room.

On December 5, 2023, the Committee co-sponsored an event entitled “The Future of International Arbitration and Global Trade.” Hosted by Dechert LLP, the event brought together government officials, policymakers, practitioners, and scholars to debate potential policy changes that could reshape international protection for foreign investment, the relationships between companies and governments, and the structure of the global economy. It included panels on calls for investor-state dispute settlement reform, the *Sulu* arbitration award, and third-party funding.

Committee on International Trade Law

Committee Chair: Prof. Richard Steinberg (UCLA School of Law)

This Committee sponsored a panel entitled “Geopolitics and the Emerging Investment Regime.” The panel examined the challenges posed by efforts, driven by U.S. national security considerations, to regulate U.S. high-tech outbound investment involving “countries of concern.” Examples of areas that might be subject to new regulations include certain semiconductors and microelectronics, artificial intelligence technologies, and quantum computing technologies. The panel examined the current state of play on outbound investment review, including its potential effect on capital flows between the United States, Europe, and China. The panelists were Josh Gruenspecht, Partner, Wilson Sonsini Goodrich & Rosati; Zongyuan Zoe Liu, Maurice R. Greenberg Fellow for China Studies, Council on Foreign Relations, New York; Theodore R. Posner, Assistant General Counsel (International Affairs), U.S. Department of the Treasury; and Anne Salladin, Partner, Hogan Lovells. The moderator was Amy Porges, Principal, Porges Trade Law.

Committee on International Law in Domestic Courts

Committee Co-Chairs: Prof. Martin Flaherty (Fordham University Law School and Princeton University) and Prof. Steven M. Schneebaum (Steven M. Schneebaum, P.C. and Johns Hopkins School of Advanced International Studies)

At ILW 2023, this Committee sponsored a panel entitled “Pushback: The Increasing Resistance to the Domestic Relevance of International Law.” The panelists were Netta Barak-Corren, UCHV Fellow in Law, Ethics, and Public Policy, Princeton University, and Professor of Law, The Hebrew University of Jerusalem, Israel (who spoke about Israel); Dennis Kwok, Co-Founder and Chairman, China Strategic Risks Institute (who spoke about Hong Kong); Erin O’Donnell, Director, Program Development & Special Projects, National Committee on American Foreign Policy (who spoke about Northern Ireland); and Committee Co-Chair Steven Schneebaum (who spoke about the United States). The panel was moderated by Committee Co-Chair Martin Flaherty. The Committee also hosted a networking room.

Committee on Islamic Law and Society

Committee Chair: Prof. Sahar Aziz (Rutgers Law School)

This Committee did not provide a report.

Committee on Law of the Sea

Committee Chair: Coalter G. Lathrop (Sovereign Geographic)

At ILW 2023, this Committee sponsored a panel entitled “The Advisory Function of the International Tribunal for the Law of the Sea in a Time of Climate Crisis.” The panelists were Payam Akhavan, Professor of International Law, Chair in Human Rights, and Senior Fellow, Massey College, University of Toronto; Kevin Chand, Legal Advisor, Permanent Mission of Vanuatu to the United Nations; Rozemarijn Roland Holst, Assistant Professor in International Environmental Law, Durham Law School, United Kingdom; Phoebe Okowa, Professor of Public International Law and Director of Graduate Studies, Queen Mary, University of London, and Member, U.N. International Law Commission; Cymie Payne, Associate Professor, Department of Human Ecology, Rutgers University, and Associate Professor, Rutgers University School of Law—Camden. The panel was moderated by Romain Zamour, Debevoise & Plimpton LLP.

Committee on the Legitimacy and Fundamental Principles of International Law

Committee Chair: Prof. Mortimer Sellers (University of Baltimore)

At ILW 2023, this Committee sponsored a panel entitled “Border Governance in an Interdependent World.” The panel considered the fundamental principles that prompt clashing interests related to border governance and how to preserve the effectiveness and legitimacy of international law in the face of conflicting values. The panel aimed to advance thinking about how border governance, broadly understood, can better accommodate human rights, welfare, and national security. The panelists were Moria Paz, Visiting Scholar, Helen Diller Institute for Jewish Law and Israel Studies, UC Berkeley School of Law; Jaya Ramji-Nogales, Associate Dean for Research and I. Herman Stern Research Professor, Temple University Beasley School of Law; Beth Simmons, Andrea Mitchell University Professor of Law, Political Science, and Business Ethics, Penn Carey Law School, University of Pennsylvania; and Chantal Thomas, Radice Family Professor of Law, Cornell University Law School. The panel was moderated by the Committee Chair.

In addition, the Committee co-sponsored a panel entitled “Is the International Legal Order Unraveling?” with the Study Group on Threats to the Liberal International Legal Order (see below). With the Committee on United Nations Law, it co-sponsored a panel entitled “The UN International Law Commission and the Future of International Law-Making” (see below). The Committee also hosted a networking room during ILW 2023.

Committee on Space Law

Committee Co-Chairs: Prof. Henry R. Hertzfeld (Elliott School of International Relations, George Washington University) and Prof. Matthew Schaefer (University of Nebraska College of Law)

At ILW 2023, this Committee sponsored a panel entitled “Outer Space & Earth Interactions within Environmental Governance & Accountability Regimes.” This panel explored two current environmental challenges involving the linkage between outer space and the Earth. First, with new commercial and governmental activities and plans involving human travel back to the Moon and to Mars, the panel explored recent efforts to update the anti-contamination or planetary protection standards. These standards were first created decades ago in a scientific era of outer space activities but have undergone revisions and updating to account for the new commercial era of space exploration. The Committee on Space Research (COSPAR) and national authorities have updated their anti-contamination standards to take account of the realities of new commercial activities and ventures while still seeking to preserve celestial body environments for science research. Second, the panel examined the vital role of space assets, specifically remote sensing satellites, to combatting global climate change on Earth through enhanced data collection, accountability, and transparency. Countries and companies have targets for carbon and other emissions in non-legally binding agreements, but such agreements are made more effective through the use of remote sensing. Panelists were Mike Gold, Chief Growth Officer, Redwire Space; Angel Hsu, Assistant Professor and Founder/Director of Data-Driven EnviroLab, University of North Carolina at Chapel Hill; Karen L. Jones, Senior Project Leader, Center for Space Policy and Strategy, Aerospace Corp.; and Meg Vernal, Deputy General Counsel, Voyager Space. The panel was moderated by Committee Co-Chair Matthew Schaefer.

The Committee also was a co-sponsor for the 16th Annual University of Nebraska Washington, D.C. Space Law Conference. Held on September 29, 2023, the conference included a panel on “Current Dynamics and Looming Challenges in Commercial Space.” It featured panelists Krystal Azelton, Secure World Foundation; Laura Cummings, Astroscale; Ruth Pritchard-Kelly, RPK Advisors; and Committee Co-Chair Matthew Schaefer. The conference included another panel on “Legal Questions about Growing Military Uses of U.S. Commercial Satellites,” which was moderated by Prof. Jack Beard, Director of the University of Nebraska Space, Cyber and National Security Law Program, Editor-in-Chief of the Woomera Manual and Chair of the ABILA Use of Force Committee. Peter J. Beshar, General Counsel, U.S. Dept of the Air Force, delivered the keynote address.

Committee on Teaching International Law

Committee Chair: Prof. Milena Sterio (Cleveland-Marshall College of Law, Cleveland State University)

This Committee sponsored a pedagogy program at the 2023 Association of American Law Schools Annual Meeting in San Diego on January 6, 2023. It also hosted a networking room during ILW 2023.

Committee on United Nations Law

Committee Co-Chairs: Prof. Christiane Ahlborn (Trinity College, Dublin) and Bart Smit Duijzentkunst (U.N. Office of Legal Affairs)

At ILW 2023, this Committee co-sponsored a panel entitled “The UN International Law Commission and the Future of International Law-Making.” The panelists were Natalia Jiménez Alegría, Legal Adviser, Permanent Mission of Mexico to the United Nations; Enrico Milano, Legal Adviser, Permanent Mission of Italy to the United Nations; Sean D. Murphy, Manatt/Ahn Professor of International Law, George Washington University Law School; Nilufer Oral, Director, Centre for International Law, National University of Singapore, and Chair, U.N. International Law Commission;

and Douglas Pivnichny, Associate Legal Officer, Codification Division, U.N. Office of Legal Affairs. The panel was moderated by Vladyslav Lanovoy, Assistant Professor of Public International Law, University of Laval.

In 2024, Michael Moffatt will replace Bart Duijzentkunst as Committee Co-Chair.

Committee on the Use of Force

Committee Chair: Prof. Jack M. Beard (University of Nebraska College of Law)

Committee Chair Jack Beard and Branch members Mary Ellen O’Connell, Brad Roth, and Jennifer Trahan serve on the ILA Committee on Use of Force: Military Assistance on Request. All four members attended the May 2023 committee meeting in Warsaw, Poland, either in person or remotely. They also attended the remote meeting on November 30–December 1, 2023. The ILA Committee is studying the question of military assistance on request.

Study Group on Threats to the Liberal International Order

Study Group Chair: Prof. David L. Sloss (Santa Clara University School of Law)

This Study Group and the Committee on the Legitimacy and Fundamental Principles of International Law co-sponsored a panel entitled “Is the International Legal Order Unraveling?” The panel grew out of the work of the Study Group, which produced a book entitled *Is the International Legal Order Unraveling?*, edited by Study Group Chair David Sloss and published by Oxford University Press in 2022. The panel brought together several Study Group members for a roundtable discussion of questions related to the current state of the international order in light of Russia’s invasion. Topics addressed included climate change, the law of armed conflict (including accountability for criminal violations), international trade law, and the ongoing struggle between democracies and autocracies. Panelists also considered how the perceived legitimacy of international law (or lack thereof) affects change in the international legal order. Panelists were Maxine Burkett, Assistant Director for Climate, Ocean, and Equity, White House Office of Science and Technology Policy, former Deputy Assistant Secretary for Oceans, Fisheries and Polar Affairs, U.S. Department of State, and Professor of Law (on leave), William S. Richardson School of Law, University of Hawai’i at Manoa; Laura A. Dickinson, Oswald Symister Colclough Research Professor and Professor of Law, George Washington University School of Law; and Richard H. Steinberg, Jonathan D. Varat Professor of Law and Professor of Political Science, UCLA School of Law. The moderator was Study Group Chair David Sloss.

The Study Group has now completed its mandate and been dissolved.

American Branch Members on ILA Committees

Branch members continue to be active on ILA Committees. The following members are currently serving on those committees:

Committee on Alternative Dispute Resolution in International Law: Amy Porges (Co-Rapporteur), Guillermo Jose Garcia Sanchez, M. Imad Khan, and Frauke Nitschke

Committee on Enforcing the Rights of Children in Migration: Prof. Warren Binford (Chair) and Prof. Alison Renteln

Committee on Global Health Law: Prof. Frederick Abbott (Co-Chair), Prof. Ryan Abbott, and Dr. Ruth Atherton

Committee on Human Rights in Times of Emergency: Prof. Christina Cerna (Co-Chair), Prof. William Aceves, Prof. Aaron Fellmeth, and Prof. Hurst Hannum

Committee on International Law and Sea Level Rise: Prof. Maxine Burkett and Prof. Sean Murphy

Committee on International Migration and International Law: Prof. James A. R. Nafzinger and Prof. Jaya Ramji-Nogales

Committee on International Monetary Law: Lee Buchheit, James Freis, David Gross, and Prof. Cynthia Lichtenstein

Committee on International Protection of Consumers: Prof. James Nehf

Committee on International Securities Regulation: Paul Stevens (Rapporteur) and Prof. Cynthia Lichtenstein

Committee on International Tax Law: Prof. William Byrnes

Committee on Protection of People at Sea: Prof. Carole Petersen and Prof. Anastasia Telesetky

Committee on Rule of Law and International Investment Law: Prof. Andrea Bjorklund (Co-Rapporteur), Prof. Jose Alvarez, and David Attanasio

Committee on Safeguarding Cultural Heritage in Armed Conflict: Prof. James A.R. Nafzinger, Prof. Alison Renteln, and Prof. Leila Sadat

Committee on Space Law: Rafael Moro Aguilar, Prof. Matthew Schaefer, and Prof. Frans von der Dunk

Committee on Submarine Cables and Pipelines under International Law: Captain J. Ashley Roach (Chair), Kent D. Bressie, Prof. Paolo Davide Farah, and Onni Irish

Committee on Use of Force: Military Assistance on Request: Prof. Jack M. Beard, Prof. Mary Ellen O'Connell, Prof. Jennifer Trahan, and Prof. Brad Roth (Alternate)

2024 REPORT OF THE DIRECTORS OF STUDIES MORTIMER SELLERS AND MILENA STERIO

In October, 2024, Mortimer Sellers of the University of Baltimore and Milena Sterio of Cleveland State University succeeded Jennifer Trahan of New York University and Peter Yu of Texas A & M as the ABILA Directors of Studies.

During their energetic and effective term as Directors of Studies, Professors Trahan and Yu integrated the ABILA Committees more thoroughly into the activities of International Law Weekend, encouraging every Committee to submit a panel proposal for the ILW conference.

Directors Trahan and Yu also encouraged ABILA members to participate in the broader ILA Committees, both as nominees of ABILA and, in some cases, as supernumerary members, invited directly by the ILA Committee chairs. Directors Sellers and Sterio will follow the excellent and inspiring example of their predecessors.

In addition, they hope to embolden Committees to consider how best to advance respect for international law and the international rule of law, as envisioned in the ILA Constitution, and to encourage the Committees to clarify and develop international law, both public and private, and to publish the useful results of their research and investigations.

The Directors of Studies invited the Chairs of all ABILA Committees to provide a Report of their activities in 2024, which are collected below.

Arms Control and Disarmament Committee

Chair: Luis Fortuno (Steptoe & Johnson LLP)

The Committee on Arms Control and Disarmament sponsored a panel at International Law Weekend 2024. The title of the panel was “Closing the Chemical Weapons Impunity Gap: An International Tribunal? Panelists included Committee Chair, Luis Fortuño; John Balouziyeh (Curtis, Mallet-Prevost, Colt & Mosle LLP); George P. Fletcher (Columbia University School of Law); Robert Petit (United Nations International, Impartial and Independent Mechanism Investigating Serious Crimes in Syria); Joumana Seif (European Centre for Constitutional and Human Rights); and Paula Silfverstolpe (Swedish Defence University).

Formation of Rules of Customary International Law Committee

Chair: Prof. Brian Lepard (University of Nebraska College of Law)

At ILW 2024, this Committee sponsored a panel entitled “The Rights of Children to be Free of Labor and Exploitation. Panelists included Brian Lepard, Committee Chair (University of Nebraska College of Law) as moderator, and Owen Brown (City University of New York), Douglass Cassel (King & Spalding LLP), Rossana Deplano (University of Leicester School of Law), Alan Franklin (Vancouver Island University), Naomi Rothenberg (King County Department of Public Defense), and Benjamin Smith (International Labour Organization).

Global Health Law

Chair: Prof. Ana Santos Rutschman (Villanova Law School)

The Global Health Law Committee was formed in 2024. At ILW 2024, the Committee organized a panel entitled “The World Together or a World Apart? Pandemic Prevention, Preparedness and Response as Law of the Powerless.” The panel was moderated by Ana Santos Rutschman, Committee Chair (Villanova Law School), and it featured the following panelists: Matthew Carvalho (Sunway Center for Planetary Health); Alexandra Phelan (Johns Hopkins University Bloomberg School of Public Health); Joshua Sarnoff (DePaul University College of Law); Pedro Villareal (German Institute for International and Security Affairs); and Justin Wong (Ministry of Health, Brunei).

International Arbitration Committee

Co-Chairs: Floriane Lavaud (Debevoise & Plimpton LLP) and Daniel Reich (Shearman & Sterling LLP)

At ILW 2024, the International Arbitration Committee sponsored two insightful panels. The first, entitled “*The Evolving Geopolitical Landscape and Risks for Global Aviation*,” featured distinguished panelists Marcelo L. Garcia, Chief Aviation Regulation and Policy, Netherlands Airport Consultants (NACO); Matthew Borrie, Chief Intelligence Officer, Osprey Flight Solutions; Floriane Lavaud, Partner, Withers, Co-Chair, ABILA Committee on International Arbitration; Yaw Nyampong, Legal Officer, International Civil Aviation Organization and Annita Sciacovelli, Advisor for EU Agency for Cybersecurity, Professor of International Law, University of Bari (Italy). The discussion centered on how shifting geopolitical dynamics affect the aviation industry, with a focus on the legal challenges and risks arising in international air travel and commerce.

The second panel, “*David v. Goliath: Harnessing the Power of Artificial Intelligence in International Arbitrations*,” brought together experts Joseph L. Choe, Associate (International Litigation and Arbitration, Skadden Arps, Slate, Meagher & Flom LLP; Benjamin Malek, Silicon Valley Arbitration & Mediation Center, AI Task Force; Sophie Nappert, Arbitrator, Three Verulam Buildings Barristers; Olivier Roberts, CEO, Wickard.ai, Co-Lead of AI Practice Group, Holtzman Vogel; Vedad Tabich, Strategic Business Development Lead, Harvey AI and Anastasia Ugale, Independent International Law & Dispute Resolution Counsel to explore the role of artificial intelligence in international arbitration. The panel examined how AI tools are leveling the playing field between smaller entities and larger corporations in dispute resolution.

The Committee also hosted a networking room during ILW 2024.

International Commercial Law Committee

Chair: Prof. Irene Calboli (Texas A&M University School of Law)

This Committee did not provide a report.

International Criminal Court Committee

Co-Chairs: Prof. Jennifer Trahan (NYU Center for Global Affairs) and Prof. Patrick Keenan (University of Illinois College of Law)

At ILW 2024, the Committee sponsored a panel entitled, "The Veto (a film)." The panelists included Tim Slade, film Writer, Director, and Producer; Jennifer Trahan, Professor, NYU Center for Global Affairs and Author, *Existing Legal Limits to Security Council Veto Power in the Face of Atrocity Crimes* (2020); and Andras Vamos-Goldman, Former Executive Director, Justice Rapid Response and Senior Fellow, NYU Center for Global Affairs. Richard Goldstone, former Chief Prosecutor, International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, was standing to serve as a panelist, but was unable to join due to a faulty internet connection.

The Committee also sponsored a panel entitled, "The War in Ukraine: Lessons Learned and Challenges Ahead for International Criminal Law." The panelists included: David Donat Cattin, Adjunct Associate Professor of International Law at NYU Center for Global Affairs; Jonathan Hafetz, Professor of Law at Seton Hall Law School; Oona Hathaway, Gerard C. and Bernice Latrobe Smith Professor of International Law at Yale Law School; Ambassador Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice at the U.S. Department of State; and Ambassador Christian Wenaweser, Ambassador, Permanent Representative of Liechtenstein to the UN. Gabor Rona, Professor of Practice, Benjamin N. Cardozo School of Law, and Co-Chair of the ABILA International Humanitarian Law Committee, served as moderator.

The Committee also hosted a networking room during ILW 2024.

The Committee additionally issued a "Statement by the ABILA ICC Committee on the Application for ICC Arrest Warrants in the 'Situation in the State of Palestine,'" dated May 28, 2024.

International Environmental and Energy Law Committee

Co-Chairs: Carolina Arlota (Sabin Center for Climate Change Law, Columbia Law School) and Myanna Dellinger (EinStrong Foundation)

The Committee of International Environmental and Energy Law submitted its own proposal for the ILW 2024 and sponsored the following selected panel for the ILW 2024: *Recognition and Enforcement of the Human Right to a Healthy Environment: Parallel Proceedings in International Courts – A Roundtable Discussion*, which had as moderator Milena Sterio, Director, Domestic and International LL.M. Program, Charles R. Emrick Jr.-Calfee Halter & Griswold Professor of Law, Cleveland State University College of Law; Chair, ABILA Committee on Teaching International Law, and featured as speakers: Paolo Farah, Professor of Public Administration and Public Policy, West Virginia University School of Public Administration Chiara Giorgetti, Professor of Law, University of Richmond School of Law; Counsel for the African Union in the ICJ Advisory Opinion on States' Climate-related Obligations Soledad García Muñoz, Drinan Chair in Human Rights, Georgetown University Law Center; Former Special Rapporteur on Economic, Social, Cultural, and Environmental Rights, Inter American Commission on Human Rights Franz Perrez, Swiss Legal Advisor; former Swiss Chief Negotiator for Climate Change Paul R. Williams.

The Committee on International Environmental and Energy Law was the first to host a blog symposium. The selected authors and blog posts were as follows:

Mariah Bowman (*Using Climate Financing as a Guide for Environmental Justice Compensation in Kiribati*); Yirong Sun (*Empowering Law in Earth System Models*); Eoin Jackson (*Closing the Accountability Gap: The Urgency of Mandatory Corporate Climate Commitments*); Galo Márquez (*Lessons from the Rana Plaza: Arbitrating Human Rights claims against Transnational Companies*); and, finally, Kimberley Graham (*Gwich'in Human Rights*).

International Human Rights Committee

Co-Chairs: Prof. Aaron Fellmeth (Sandra Day O'Connor College of Law, Arizona State University) and Prof. Warren Binford (University of Colorado Pediatric Law Center)

The Committee sponsored a panel at International Law Weekend 2024, co-sponsored by the International Humanitarian Law Committee. The title of the panel was "Beyond Compliance: Reflections on a Protective Environment for Children in War." Panelists included Warren Binford (University of Colorado) as moderator, and Rocco Blume (War Child), Michael Garcia Bochenek (Human Rights Watch), Ioana Cismas (University of York), and Ezequiel Heffes (Watchlist on Children and Armed Conflict) as panelists.

International Humanitarian Law Committee

Co-Chairs: Prof. Gabor Rona (Benjamin N. Cardozo School of Law, Yeshiva University) and Ashika Singh (Debevoise & Plimpton LLP)

The Committee on International Humanitarian Law sponsored a panel at the International Law Weekend 2024 conference, co-sponsored by the International Human Rights Committee. The title of the panel was "Beyond Compliance: Reflections on a Protective Environment for Children in War." Panelists included Warren Binford (University of Colorado) as moderator, and Rocco Blume (War Child), Michael Garcia Bochenek (Human Rights Watch), Ioana Cismas (University of York), and Ezequiel Heffes (Watchlist on Children and Armed Conflict) as panelists. In addition, the Committee issued a statement in opposition to US sanctions against the ICC, and it also sponsored a panel on the new The Hague/Ljubljana Mutual Legal Assistance Treaty at Cardozo Law School.

International Intellectual Property Committee

Co-Chairs: Prof. Sean Flynn (American University Washington College of Law) and Prof. J. Janewa Osei-Tutu (University of Miami)

At ILW 2024, this Committee sponsored a panel entitled "WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge." The panel was moderated by Committee Co-Chair, Sean Flynn, and panelists included Aman Gebru (University of Houston Law Center), J. Janewa Osei-Tutu, Committee Co-Chair (University of Miami School of Law), Srividhya Ragavan (Texas A & M University School of Law), and Peter K. Yu, former Co-Chair (Texas A&M University School of Law and ABILA Vice-President).

“Beyond Multilateral Intellectual Property Law.” The panel discussed how the multilateral intellectual property system—managed primarily through the World Intellectual Property Organization and, since 1994, also the World Trade Organization—necessarily interfaces with and often lags behind other policy fora in addressing key policy issues. The panelists were Margaret Chon, Donald and Lynda Horowitz Endowed Chair for the Pursuit of Justice, Seattle University School of Law; Aman Gebru, Assistant Professor, University of Houston Law Center; Michal Shur-Ofry, Associate Professor, Faculty of Law, The Hebrew University of Jerusalem, Israel; and former Committee Co-Chair Peter Yu. Committee Co-Chair Sean Flynn moderated the panel.

International Investment Law Committee

Co-Chairs: David Attanasio (Womble Bond Dickinson LLP) and Dora Ziyaeva (Dentons LLP)

During 2024, the Investment Law Committee pursued two major initiatives. The Committee co-sponsored an excellent panel event in February 2024 at the Atlantic Council, entitled “Navigating Uncharted Waters: The Future of Transatlantic Relations and the South China Sea.” This event focused on emerging challenges for international arbitration in resolving geopolitical disputes that have developed in the context of heightened international tension. It drew from both leading experts on international relations as well as international arbitration experts to analyze and understand how the international arbitral system can respond to these challenges.

The Committee also sponsored a well-received panel event at International Law Weekend, entitled “Investment Law, Human Rights, and the International Control of Industrial Harms.” The panel focused on exploring the parallel litigation before the Inter-American Court of Human Rights in *La Oroya v. Peru* and before an investor-State tribunal in *Renco II v. Peru*, concerning the same metal smelter complex and its impact on surrounding communities. The panel assessed what contributions international human rights and investment law can and should make to controlling the impact of such projects. The very well-attended panel took the form of a roundtable discussion among highly regarded academics and practitioners with expertise in investment law and human rights.

During 2025, the Investment Law Committee will continue to support public fora for discussion of cutting-edge issues in investment law. We are actively working with ABILA staff to publish a blog symposium on international investment law. We are currently planning to co-sponsor the Penn Carey Law International Arbitration Association’s 6th annual conference in March 2025 and will seek other opportunities to host or co-sponsor similar events. We also plan to sponsor an investment law-focused panel for International Law Weekend.

International Law in Domestic Courts Committee

Co-Chairs: Prof. Martin Flaherty (Fordham Law School) and Prof. Steven Schneebaum (Johns Hopkins University)

The Committee organized a panel at ILW 2024 entitled “The UN Convention on the Rights of the Child (CRC) as ‘Law of the Powerless’ Children in America.” The panel featured Barbara Stark as moderator (Hofstra University), and Jo Becker (Columbia University School of International and Public Affairs), Diandra Burton (Hofstra University), Jane Spinak (Columbia Law School), and Jonathan Todres (Georgia State University) as panelists.

International Trade Law Committee

Chair: Prof. Richard Steinberg (UCLA School of Law)

This Committee did not provide a report.

Islamic Law and Society Committee

Chair: Prof. Sahar Aziz (Rutgers Law School)

This Committee hosted a networking session at ILW 2024.

Law of the Sea Committee

Chair: Coalter G. Lathrop (Sovereign Geographic)

At ILW 2024, the Committee sponsored a panel entitled, “Protection of People at Sea: Human Rights on the Oceans.” The panelists included three members of the International Law Association Committee on the Protection of People at Sea: Anastasia Telesetsky, Professor, Cal Poly-San Luis Obispo; Irini Papanicolopulu, British Academy Global Professor of International Law, SOAS University of London; Steven Haines, Professor of Public International Law, School of Law and Criminology, University of Greenwich. Coalter Lathrop, Chair of the Committee, and Carole Petersen, Cades Foundation Professor of Law, University of Hawai‘i School of Law, co-moderated. The Committee also hosted a networking room during ILW 2024.

Legitimacy and Fundamental Principles of International Law Committee

Chair: Prof. Mortimer Sellers (University of Baltimore)

At ILW 2024, the Committee on the Legitimacy and Fundamental Principles of International Law sponsored a panel entitled “The Legitimacy of Power and Power of Legitimacy.” The panel was moderated by Ioanna Tourkochoriti (University of Baltimore School of Law), and panelists included MJ Durkee (Washington University), Monica Hakimi (Columbia Law School), and Mortimer Sellers (University of Baltimore School of Law). The discussion emphasized the necessity of substantive legitimacy in assuring the influence and effectiveness of international law, but at the same point the importance of effectiveness in securing legitimacy. The international rule of law depends on its own first principles for its force, and loses power when international organizations neglect the values they exist to serve.

Space Law Committee

Co-Chairs: Prof. Henry R. Hertzfeld (Elliott School of International Relations, George Washington University) and Prof. Matthew Schaefer (University of Nebraska College of Law)

The Committee Space Law, together with the Committee on the Use of Force, developed, proposed, and presented a panel of distinguished international experts at the 2024 International Law Weekend.

The title of the panel was “Empowering International Law to Address Rising Tensions in Outer Space: The Woomera Manual on the International Law of Military Space Activities and Operations.”

This panel discussed how international law must be empowered to better promote space sustainability and provide a more reliable road map to avoid miscalculations and mistakes that may risk armed conflict in space. These aspirations first rely on a comprehensive examination of the existing legal framework for space, focusing on state practice and the full spectrum of international law applicable to military space activities in peace time, in times of stress and tension, and in an armed conflict. The panel explored these issues amid growing threats to peace in space, drawing on an unprecedented international collaborative work, the Woomera Manual on the International Law of Military Space Activities and Operations (Oxford University Publishing.) All the panelists were editors or contributors to the Manual and the panel was moderated by the Chair of the Committee, Prof. Jack Beard.

Three members of the Committee, Professors Mary Ellen O'Connell, Professor Jennifer Trahan, and Professor Beard, continued to participate in meetings involving discussions, presentations, and drafting sessions for a forthcoming report by the ILA Committee on the Use of Force: Military Action with Consent. The most recent meeting was held on 27 June 2024 in Athens, Greece, in conjunction with the 81st ILA BIENNIAL Conference. Professors McConnell and Trahan attended this meeting in person and Professor Beard participated via Zoom and presented a paper on “Prohibited Intervention and the Use of Force in the Cyber Context.”

The Committee on the Use of Force and the Committee on Outer Space also jointly sponsored Nebraska Law's Annual Fall Space Law Conference at the Army and Navy Club in Washington DC on September 27, 2024. The theme of the conference was “Continuing Challenges in Military and Commercial Space Law.”

Teaching Public International Law Committee

Chair: Prof. Milena Sterio (Cleveland State University College of Law, Cleveland State University)

This Committee co-sponsored a pedagogy program at the 2025 Association of American Law Schools Annual Meeting in San Francisco on January 11, 2025, entitled “Innovations in International Law Instructional Design.”

United Nations Law Committee

Co-Chairs: Prof. Christiane Ahlborn (Trinity College, Dublin) and Michael J. Moffatt (United Nations, Office of Legal Affairs)

At ILW 2024, the Committee sponsored a panel entitled, “Arbitrating with International Organizations.” The panelists included August Reinisch, Professor, University of Vienna and Special Rapporteur, United Nations International Law Commission; Wieteke Theeuwes, Counselor and Legal Adviser, Permanent Mission of the Netherlands to the United Nations, New York; Garth Schofield, Deputy Secretary-General, Permanent Court of Arbitration; Alexandra von Willisen, Senior Legal Officer and Head of the Arbitration Practice Group, United Nations Office of Legal Affairs; and Christina Hioureas, Partner, Foley Hoag, United Nations Practice Group. Michael J. Moffatt, United Nations, Office of Legal Affairs, Co-Chair of the Committee, moderated the event.

Use of Force Committee

Chair: Prof. Jack M. Beard (University of Nebraska College of Law)

The Committee on the Use of Force, together with the Committee on Outer Space, developed, proposed, and presented a panel of distinguished international experts at the 2024 International Law Weekend. The title of panel was “Empowering International Law to Address Rising Tensions in Outer Space: The Woomera Manual on the International Law of Military Space Activities and Operations.” This panel discussed how international law must be empowered to better promote space sustainability and provide a more reliable road map to avoid miscalculations and mistakes that may risk armed conflict in space. These aspirations first rely on a comprehensive examination of the existing legal framework for space, focusing on state practice and the full spectrum of international law applicable to military space activities in peace time, in times of stress and tension, and in an armed conflict. The panel explored these issues amid growing threats to peace in space, drawing on an unprecedented international collaborative work, the Woomera Manual on the International Law of Military Space Activities and Operations (Oxford University Publishing.) All the panelists were editors or contributors to the Manual and the panel was moderated by the Chair of the Committee, Prof. Jack Beard.

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The Committee on the Use of Force and the Committee on Outer Space also jointly sponsored Nebraska Law's Annual Fall Space Law Conference at the Army and Navy Club in Washington DC on September 27, 2024. The theme of the conference was “Continuing Challenges in Military and Commercial Space Law”

Study Group on the Negotiation of a Crimes Against Humanity Treaty

Chair: Prof. Leila Nadya Sadat (Washington University School of Law)

This Study Group organized a panel at ILW 2024 entitled “Crimes against Humanity: From Draft Articles to New Treaty in a World on Fire?” The panel was moderated by Leila Nadya Sadat, Study Group Chair (Washington University), and panelists included Hannah Gary (UCLA Law School), Natalia Jimenez Alegria (Permanent Mission of Mexico to the United Nations), Larry Johnson (Former Assistant Secretary-General for Legal Affairs, United Nations), Ambassador Michael Imran Kanu (Permanent Mission of Sierra Leone to the United Nations), Keke Motsepe (Permanent Mission of South Africa to the United Nations), Priya Pillai (Asia Justice Coalition), and Akila Radhakrishnan (Atlantic Council).

American Branch Members on ILA Committees

ABILA Branch members continue to be active on ILA Committees. The following members are currently serving on ILA committees:

Committee on Abuse of Rights in International Law: Prof. Frédéric Sourgens

Committee on Alternative Dispute Resolution in International Law: Amy Porges (Co-Rapporteur), Guillermo Jose Garcia Sanchez, M. Imad Khan, and Frauke Nitschke

Committee on Business and Human Rights: Prof. Christiane Ahlborn, Prof. Paolo Davide Farah, Prof. Anita Ramasastry, Prof. Louise Ellen Teitz, Prof. Peter Yu

Committee on Comparative Diplomatic and Consular Immunities, Privileges, and Inviolabilities: Prof. Chimene Keitner, Prof. David P. Stewart

Committee on Conflict of Laws Issues in International Arbitration: David Attanasio, Prof. Andrea Bjorklund, Nikolaus Pitkowitz, Prof. Louise Ellen Teitz

Committee on Enforcing the Rights of Children in Migration: Prof. Warren Binford (Chair) and Prof. Alison Renteln

Committee on Global Health Law: Prof. Frederick Abbott (Co-Chair), Prof. Ryan Abbott, and Dr. Ruth Atherton

Committee on International Law for the SDGs: Dr. Freya Doughty-Wagner, Anita Halvorssen, Prof. Rumu Sarkar

Committee on International Migration and International Law: Prof. James A.R. Nafziger and Prof. Jaya Ramji-Nogales

Committee on International Monetary Law: Lee Buchheit, James Freis, David Gross, and Rick Ostrander

Committee on International Securities Regulation: Paul Stevens (Rapporteur)

Committee on International Tax Law: Prof. William Byrnes

Committee on Protection of People at Sea: Prof. Carole Petersen and Prof. Anastasia Telesetky

Committee on Rights of Nature: Anxhela Mile, Prof. Mortimer Sellers, Prof. Milena Sterio

Committee on Safeguarding Cultural Heritage in Armed Conflict: Prof. Emily Behzadi, Anne-Marie Carstens, Prof. James A. R. Nafziger, Prof. Alison Renteln

Committee on Space Law: Rafael Moro Aguilar, Prof. Matthew Schaefer, and Prof. Frans von der Dunk

Committee on Submarine Cables and Pipelines under International Law: Kent D. Bressie, Prof. Paolo Davide Farah, Onni Irish, J. Ashley Roach

Committee on Urbanisation and International Law – Potentials and Pitfalls: Christiane Ahlborn, Jonathan Hafetz, Kaara Martinez

Committee on Use of Force: Military Assistance on Request: Prof. Jack M. Beard, Prof. Mary Ellen O'Connell, Prof. Jennifer Trahan

AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION STATEMENT OF POLICIES AND DISCLAIMERS CONCERNING COMMITTEE REPORTS

Reports of American Branch, International Law Association Committees are posted at http://www.ila-americanbranch.org/committee_overview and are published in these Proceedings, which are sent to Branch members every two or four years.

A Branch Committee report or other work product does not represent the official position of the American Branch. Although a Branch Committee may take a position on policies, events, or interpretations of international law, such a position represents solely the views of the Branch Committee.

If an International Committee approved by the Executive Council of the International Law Association in London is working in the same area as a Branch Committee, the ABILA Committee may monitor or elaborate on the work of the International Committee, or it may work in another area entirely. If a Branch Committee takes a position on any matter being considered by an International Committee, such a position represents solely the views of the Branch Committee.

The position of a Branch Committee may not represent the views of all members of the Committee. In that case, a Committee may note that fact. A written statement of dissenting views may also accompany a Committee report. Additional disclaimers or explanations may be attached to individual Branch Committee reports.

PROCEDURE FOR ADOPTING ABILA BOARD STATEMENTS AND RESOLUTIONS ON SALIENT INTERNATIONAL LAW ISSUES, PROPOSALS, AND DEVELOPMENTS

1. Any ABILA Officer, Board Member, or Committee Chair can propose that the Board issue a Board Statement or a Board Resolution on a matter involving salient International Law issues, proposals or developments and circulate it to the members of the Board via email. For this purpose, the Board includes members, officers, and the honorary Vice Presidents.
2. During a period of five-days following circulation of the proposal, any Board Member can offer Friendly Amendments to the Statement or Resolution which may be accepted by the proposer and circulated to the Board. Board members can also circulate arguments in favor or opposed to adoption of the Statement or Resolution during this period.
3. During the five-day period, Board members and officers should indicate their approval of the Statement or Resolution by an email to the Members of the Board.
4. If a two-thirds majority of the officers and members of the Board *who are voting and present* indicate their approval during the five-day period, the Statement or Resolution shall be deemed adopted.*
5. If adopted, the Statement or Resolution will be posted on the ABILA website and otherwise circulated as deemed appropriate by the President.
6. The names of those Board Members and officers who indicated their approval will appear under the Board Statement or Resolution when it is issued with an indication that the undersigned are supporting the Statement or Resolution as a member of the ABILA Board and that their support does not represent the position of any other institution to which they may belong. The names of Board members that did not indicate their approval will not be listed.
7. This procedure does not affect the existing authority of the ABILA President or ABILA Committees to issue statements.

Adopted by a unanimous vote of the ABILA Board on April 6, 2023.

*Italicized language amended April 22, 2024.

INTERNATIONAL CRIMINAL COURT COMMITTEE **STATEMENTS**

THE USE OF U.S. SANCTIONS TO UNDERMINE THE WORK OF THE ICC

October 15, 2020

The Committee condemns the recent declaration of a sanctions and visa restriction regime concerning the International Criminal Court contained in Executive Order 13928, and in particular the subsequent imposition of sanctions against the International Criminal Court's Prosecutor, Fatou Bensouda, and one of her chief aides, Phakiso Mochochoko. The Committee denounces the use of threats designed to bring an end to the Prosecutor's inquiry into the conduct of US nationals in Afghanistan and other states within the Court's territorial jurisdiction (including alleged acts of torture by CIA officials that have been well-documented by the United States Senate Select Committee on Intelligence).

The sanctions—previously reserved for the likes of drug traffickers, terrorists, and cyber-criminals—rest on the faulty premise that the ICC's work poses “an unusual and extraordinary threat to the national security and foreign policy of the United States,” resulting in a “national emergency.” The Committee notes that this conclusion is directly contradicted by the current administration's simultaneous contentions that the Court is both “grossly ineffective” and a “failed institution.” Moreover, it is belied by the Court's own Statute, which provides that the United States could bring an end to the ICC's inquiry simply by instituting its own genuine investigations and, as warranted, prosecutions. Thus, the US has a clear, legitimate course of action it can take: ensure that justice is done by pursuing the rule of law instead of attempting to stymie it.

More broadly, the Committee expresses concern over the wider ramifications of the sanctions. Their imposition marks a major change for the United States: from prominent and longstanding proponent of international criminal justice efforts to an opponent of the rule of law. It likewise invites other states to similarly thwart ICC efforts to hold individuals responsible for mass atrocities, an outcome that could prove uniquely self-defeating, as much of the Court's work to date has been aligned with U.S. interests. Furthermore, in trying to block the ICC's Afghanistan investigation vis-à-vis U.S. nationals, the U.S. makes the entire Afghanistan investigation (as well as the ICC's other work) more difficult, including the ICC's investigation of alleged crimes against humanity and/or war crimes committed by members of the Taliban and affiliated forces, and members of the Afghan military.

The Executive Order is also overbroad, seemingly designed to stymie the work of the ICC more generally, beyond the targeted inquiries. It covers persons who provide “services” (Sec. 3 (a)) or “material assistance” (Sec. 1(i)(C)) to the expressly sanctioned individuals or to efforts by the ICC “to investigate, arrest, detain, or prosecute any United States personnel without the consent of the United States,” or efforts by the ICC “to investigate, arrest, detain, or prosecute any personnel of a country that is an ally of the United States without the consent of that country's government.” (Sec. 1(a)(i)(A)-(B).) This could have a profound impact on ICC operations, as much of the ICC's work is not necessarily segregated into specific investigations. The words “services” and “material assistance” are also extremely vague and overbroad, potentially encompassing US law students performing pro bono

research for the ICC through law school clinics, as well as non-governmental organizations doing general advocacy that supports the work of the ICC.

Undermining a court designed to investigate and prosecute the gravest atrocity crimes of concern to the international community also does a profound disservice to the victims of those crimes.

The Committee calls upon the President to revoke the Executive Order, and, until its revocation, urges the U.S. Government to decline to designate any further targets for sanctions.

THE BIDEN ADMINISTRATION SHOULD RESCIND THE EXECUTIVE ORDER IMPOSING SANCTIONS ON OFFICIALS OF THE INTERNATIONAL CRIMINAL COURT

January 14, 2021

By Executive Order no. 13928,⁹⁰ President Trump created a sanctions regime concerning the International Criminal Court (“ICC”), including asset freezes and travel bans. Two individuals were subsequently designated for sanctions—ICC Prosecutor Fatou Bensouda and ICC official Phakiso Mochochoko. The Executive Order also more broadly covered rendering “services” and “material assistance,” which could include non-governmental organizations that cooperate with the ICC and even U.S. academics who work with the ICC. For many reasons, including those articulated in the Committee’s past Statement,⁹¹ the U.S. should not be imposing sanctions on personnel of a judicial institution, particularly one supported by almost all major U.S. allies and whose work largely aligns with U.S. interests (e.g., prosecuting crimes in Darfur, committed in Uganda by the so-called “Lord’s Resistance Army,” and against the Rohingya). While the U.S. is not a party to the ICC’s Rome Statute—and therefore owes no formal obligation to cooperate with the ICC, which is examining the conduct of U.S. nationals in connection with the conflict in Afghanistan as well as crimes by the Taliban and Afghan Armed Forces—it is highly inappropriate to impose sanctions against international civil servants of a judicial institution for simply doing their jobs. The sanctions have been widely denounced by the American Bar Association,⁹² the New York City Bar Association,⁹³ the Philadelphia Bar Association,⁹⁴ and over seventy UN Member States,⁹⁵ as well as 188 U.S. lawyers and academics,⁹⁶ including past U.S. War Crimes Ambassadors from both Republican and Democratic administrations. Enforcement of the Executive Order has also now been preliminarily enjoined by a judge in the U.S. District Court for the Southern District of New York against a group of plaintiffs,

⁹⁰ Executive Order on Blocking Property of Certain Persons Associated with the International Criminal Court (Jun. 11, 2020) <https://www.whitehouse.gov/presidential-actions/executive-order-blocking-property-certain-persons-associated-international-criminal-court> (last visited Jan. 14, 2021)

⁹¹ See: *Statement by the American Branch of the International Law Association International Criminal Court Committee: The Use of U.S. Sanctions to Undermine the Work of the ICC*, ABILA (Oct. 2, 2020) https://ila-americanbranch.org/wp-content/uploads/2020/10/Statement_by_the_American_Branch_of_the_International_Criminal_Court_Committee_Oct._2020.pdf (last visited May 6, 2025); *Statement by the American Branch of the International Law Association International Criminal Court Committee: The United States and the ICC*, ABILA (Mar. 25, 2019) https://ila-americanbranch.org/wp-content/uploads/2020/10/2019-03-25_ICC_Statement.pdf (last visited May 6, 2025).

⁹² *ABA President Judy Perry Martinez statement Re: U.S. sanctions of International Criminal Court personnel*, ABA (Jun. 12, 2020) <https://www.americanbar.org/news/abanews/aba-news-archives/2020/06/aba-president-judy-perry-martinez-statement-re-u-s-sanctions-o> (last visited May 6, 2025).

⁹³ *Statement Opposing U.S. Sanctions on Persons Working with or for the International Criminal Court*, New York City Bar Association (Jul. 29, 2020) <https://www.nycbar.org/reports/statement-opposing-u-s-sanctions-on-persons-working-with-or-for-the-international-criminal-court> (last visited May 6, 2025).

⁹⁴ *Philadelphia Bar Association Resolution Supporting Independence of the International Criminal Court and Freedom from Sanctions and Freedom to Travel of Its Members*, Philadelphia Bar Association (Jun. 2020) https://philadelphiabar.org/?pg=ResJune20_2 (last visited May 6, 2025).

⁹⁵ Edith M. Lederer, *Over 70 ICC nations support court and oppose US sanctions*, AP News (Nov. 3, 2020) <https://apnews.com/article/united-nations-statutes-united-nations-general-assembly-war-crimes-fatou-bensouda-4c136445472896b25ba5128d811c2ed1> (last visited May 6, 2025).

⁹⁶ Kevin Jon Heller, *Statement Against US Sanctions on ICC Investigations (Updated)*, Opinio Juris (Jun. 30, 2020) <https://opiniojuris.org/2020/06/30/statement-against-us-sanctions-on-icc-investigations> (last visited May 6, 2025).

including four U.S. law professors, who brought suit alleging, inter alia, the illegality of the Executive Order as infringing their right to free speech.⁹⁷

For these reasons, as well as additional reasons expressed in the ICC Committee's prior Statements, the Biden Administration should rescind Executive Order no. 13928 at the earliest possible opportunity.

⁹⁷ *Federal Judge Sides with Human Rights Lawyers over Trump Administration's ICC Ban*, Open Society Justice Initiative (Jan. 4, 2021) <https://www.justiceinitiative.org/newsroom/federal-judge-sides-with-human-rights-lawyers-over-trump-administrations-icc-ban> (last visited May 6, 2025).

JOINT STATEMENT BY THE AMERICAN BRANCH OF THE
INTERNATIONAL LAW ASSOCIATION INTERNATIONAL
CRIMINAL COURT COMMITTEE AND THE US CHAPTER OF
THE *ASSOCIATION INTERNATIONALE DE DROIT PÉNAL*

May 4, 2021

The International Criminal Court Committee of the American Branch of the International Law Association and the U.S. Chapter of the *Association Internationale de Droit Pénal* congratulate International Criminal Court Prosecutor of Fatou Bensouda and the Office of the Prosecutor of the International Criminal Court for their joint nomination for the 2021 Nobel Peace Prize.

-ABILA ICC Committee, Professors Jennifer Trahan & Megan S. Fairlie, Co-Chairs
-Professor Leila N. Sadat, President of ABILA (in her capacity as past Committee Chair)
-*Association Internationale de Droit Pénal*, U.S. Chapter Professor Milena Sterio, President

FIVE RECOMMENDATIONS FOR RESETTING THE U.S./ICC RELATIONSHIP*

August 23, 2023

July 17, 2023, marked the 25th anniversary of the Rome Statute, the foundational treaty of the International Criminal Court (ICC), a Court of last resort for the gravest crimes. The situation in Ukraine has underscored the need for cooperation to bring perpetrators of atrocity crimes to justice and the recent announcement of U.S. cooperation in the ICC investigation in Ukraine is a welcome development. However, more can be done to support the ICC's vitally important work and combat impunity worldwide. This milestone provides an opportunity to reset the U.S. relationship with the ICC and reaffirm the United States' commitment to the rule of law and accountability.

1. The United States should fully cooperate with the ICC's Ukraine investigation

While accounts vary regarding the precise amount of aid provided by the United States to Ukraine since the war began, estimates place the total at approximately \$77 billion in bilateral military, financial, and humanitarian support.⁹⁸ Pursuant to his delegated presidential authority, U.S. Secretary of State Anthony Blinken announced the forty-third drawdown for U.S. support for Ukraine on July 25, 2023.⁹⁹ The package “contains critical military assistance totaling \$400 million worth of arms and equipment from Department of Defense stocks.”¹⁰⁰ The Fiscal Year 2024 (FY24) State, Foreign Operations, and Related Programs Appropriations Act, which passed the Senate Appropriations Committee around the same time contains significant allocations for an array of assistance programs for Ukraine.¹⁰¹ This substantial financial commitment is matched by diplomatic backing. U.S. government officials and legislators repeatedly have stated that the U.S. fully supports Ukraine and called for those who commit atrocities in Ukraine to be brought to justice.¹⁰²

Until recently, these material and rhetorical commitments were not matched with necessary investigative and prosecutorial cooperation, despite U.S. law permitting sharing of information and evidence with ICC prosecutors. This was apparently the result of objections raised by individuals

* The ABILA ICC Committee consists of approximately 97 members. One Committee member opted not to join this statement. This letter does not represent the views of the American Branch of the International Law Association, which does not take positions on issues.

⁹⁸ Jonathan Masters & Will Merrow, *How Much Aid Has the U.S. Sent Ukraine?*, COUNCIL FOR REL. (last updated July 10, 2023), <https://www.cfr.org/article/how-much-us-aid-going-ukraine> (last visited May 6, 2025).

⁹⁹ U.S. Dep't of State Press Release, Anthony J. Blinken Press Statement, Additional U.S. Military Assistance to Ukraine (July 25, 2023), <https://2021-2025.state.gov/additional-u-s-military-assistance-for-ukraine-3> (last visited May 6, 2025).

¹⁰⁰ *Id.*

¹⁰¹ U.S. Senate Committee on Appropriations Press Release, Senate Committee Approves FY24 State, Foreign Operations Appropriations Bill (July 20, 2023).

¹⁰² *See, e.g.*, U.S. Dep't of State Press Release, Supporting Justice and Accountability in Ukraine, Fact Sheet (Feb. 18, 2023), <https://2021-2025.state.gov/supporting-justice-and-accountability-in-ukraine> (last visited May 6, 2025). (“Justice and human rights accountability are central pillars of the United States’ policy on Russia’s war of aggression against Ukraine, and the United States is focused on supporting those efforts most likely to bring perpetrators to justice.”).

within the Department of Defense.¹⁰³ The decisive—albeit overdue—announcement by the U.S. administration that the President will order the Pentagon to share evidence of alleged war crimes now clears a path for the United States to support the legal fight for justice and accountability in Ukraine as vigorously as it has supported Ukraine’s defense.¹⁰⁴ The Administration should fully utilize the authority that Congress has granted and support the ICC’s investigation into atrocities in Ukraine.

2. The United States should remove impediments to assisting the ICC in other situations

It is positive that the United States is now assisting the ICC in the Ukraine situation. Yet it would be far more principled to support the ICC in all of its investigations, rather than treating Ukraine as an exceptional case.

The rules for U.S. engagement with the ICC have recently changed. The American Servicemembers’ Protection Act, passed in 2001, generally prohibited U.S. assistance to the ICC.¹⁰⁵ The Dodd Amendment to the ASPA modified the general prohibition somewhat to permit U.S. assistance in some circumstances.¹⁰⁶ In the Consolidated Appropriations Act for 2023, enacted in December 2022, Congress changed the rules regarding U.S. cooperation with the ICC, especially with respect to Ukraine.¹⁰⁷ The Statute now permits the U.S. to provide “assistance to the International Criminal Court to assist with investigations and prosecutions of foreign nationals related to the Situation in Ukraine, including to support victims and witnesses.”¹⁰⁸

Beyond the Ukraine investigation, Congress should use the revised language of the American Servicemembers’ Protection Act as a model for support in all ongoing and potential future situations, or, alternatively, as a model for support in additional specific situations coupled with more comprehensive reforms. This could take the form of a general permission for the U.S. to share information with the ICC in its investigations or it could apply only to specific investigations.

¹⁰³ *Pentagon Withholding Evidence in Russia War Crimes Case: Senators*, Al Jazeera (May 11, 2023), <https://www.aljazeera.com/news/2023/5/11/pentagon-withholding-evidence-in-russia-war-crimes-case-senators> (last visited May 6, 2025).

¹⁰⁴ Charlie Savage, *Biden Orders U.S. to Share Evidence of Russian War Crimes with Hague Court*, The New York Times (July 26, 2023), <https://www.nytimes.com/2023/07/26/us/politics/biden-russia-war-crimes-hague.html> (last visited May 6, 2025).

¹⁰⁵ The provisions of the American Servicemembers’ Protection Act, 22 U.S. Code § 7423 (2001), prohibit the U.S. from providing support to the ICC. The statute prohibits several specified forms of support for the ICC, Section 7423(d) states as follows:

Notwithstanding any other provision of law, no agency or entity of the United States Government or of any State or local government, including any court, may provide support to the International Criminal Court.

¹⁰⁶ The Dodd Amendment to the ASPA, 22 U.S. Code § 7433 (2001), modifies the general prohibition and permits certain types of assistance. Until it was amended, the Dodd Amendment read as follows:

Nothing in this subchapter shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic, Osama bin Laden, other members of Al Queda (sic), leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity.

¹⁰⁷ Consolidated Appropriations Act 2023.

¹⁰⁸ 22 U.S. Code § 7433.

For example, the ICC is currently investigating alleged crimes against humanity and war crimes in Libya and U.S.-supplied information may be relevant to that investigation. Moreover, disclosure would be entirely consistent with U.S. interests. The same is likely true of additional investigations and prosecutions being pursued before the ICC, such as those related to the crimes committed in Myanmar and Darfur, Sudan.

The “Dodd Amendment” to the ASPA permits the United States to provide assistance to international efforts, including to the ICC, to bring to justice “foreign nationals *accused of* genocide, war crimes or crimes against humanity” (emphasis added).¹⁰⁹ In a comprehensive January 15, 2010, memorandum, the D.O.J. Office of Legal Counsel laid out the Executive Branch’s interpretations of most of the key issues surrounding U.S. engagement with the ICC.¹¹⁰ One issue that it did not address, but which has reportedly been addressed since then in an interpretation that is apparently not public, is the meaning of the term “accused of.”

The apparently prevailing reading of the Dodd Amendment seems to interpret “accused of” to mean that an individual has been the subject of a formal accusatory document. If this is indeed the U.S. interpretation of the phrase, it is problematic. Waiting for a formal accusation—whether in the form of an arrest warrant, indictment or other pleading from a court or prosecutor—reduces the utility of assistance. U.S. support could be useful at very early stages of a preliminary examination, when a prosecutor is seeking to identify suspects or determine who, among a group of suspects, is most legally culpable. Early cooperation also could be highly useful in exonerating suspects and determining who should not face formal charges.

Interpreting the provision as limited to formal accusation of criminal wrongdoing is also inconsistent with the rest of the provision and apparent legislative intent. The Dodd Amendment explicitly permits the U.S. to assist in efforts to bring Saddam Hussein to justice. When the Statute was enacted in 2002, there were no formal charges against him. It would be illogical for this early-stage assistance to be explicitly permitted by one part of the Statute but prohibited by another, at least without explicit statutory language to that effect.¹¹¹

The State Department and the Department of Justice should render an unambiguous explanation of the “accused of” language so that all U.S. agencies will feel and will be fully empowered to share information with the ICC regarding foreign nationals accused of genocide, war crimes, or crimes against humanity.

¹⁰⁹ Formally titled 22 U.S. Code § 7433 – Assistance to International Efforts.

¹¹⁰ U.S. Department of Justice, Office of Legal Counsel, Memorandum for Mary DeRosa, Legal Adviser, National Security Committee (Jan. 15, 2010) <https://int.nyt.com/data/documenttools/2009-olc-memo-on-support-for-the-icc/b1a4ef1b0c5dc790/full.pdf> (last visited May 7, 2025). For a comprehensive analysis of this memorandum and the issues it addresses, see Floriane Lavaud, Ashika Singh & Isabelle Glimcher, *The Binding Interpretation by the Office of Legal Counsel of the Laws Constraining U.S. Engagement with the ICC*, Just Security (Feb. 15, 2023), <https://www.justsecurity.org/85148/the-binding-interpretation-by-the-office-of-legal-counsel-of-the-laws-constraining-us-engagement-with-the-icc-part-iii> (last visited May 7, 2025).

¹¹¹ For a more comprehensive argument regarding this issue, see Todd Buchwald, *Unpacking New Legislation on U.S. Support for the International Criminal Court*, Just Security (Mar. 9, 2023) <https://www.justsecurity.org/85408/unpacking-new-legislation-on-us-support-for-the-international-criminal-court> (last visited May 7, 2025).

3. The United States should take practical steps toward cooperation with the ICC, such as providing expertise and material support for witness protection and relocation

There are other, less visible, steps that the U.S. should take to support the work of the ICC. These measures will make it easier for the ICC to conduct its important work and recognize the ICC's role as a vital international institution.

The ICC's work is only possible because of the testimony of brave witnesses who are willing to share information about the atrocities they have experienced. Their testimony is vital to the Court but incredibly dangerous for many witnesses. After they cooperate with prosecutors, witnesses often need to be relocated so they can resume their lives safely. This challenge is becoming even more difficult as technology advances. For example, there have been advances in facial recognition software and open-source social media investigations that make it more difficult than ever to protect witnesses who have assumed new identities.¹¹²

The U.S. has voiced support for witnesses and for states that help to protect witnesses. It should offer witness protection and relocation for ICC witnesses, as it has done in other international prosecutions, including for the Kosovo Specialist Chambers and the Independent Investigative Mechanism for Myanmar.¹¹³ The U.S. Government is in a position to offer the most advanced assistance possible in this area. According to a 2021 report by a Task Force organized by the American Society of International Law (ASIL), the U.S. has previously provided *ad hoc* assistance to such effect:

Interlocutors report that the Obama Administration provided protection to at least two witnesses involved in an ICC prosecution, at a time when it was difficult to secure assistance from any other state, and that the United States offered one of the best opportunities for these vulnerable and traumatized individuals to remake their lives in safety. However, restrictions under ASPA, which have been interpreted to prevent the ICC from conducting at least some kinds of interviews with witnesses who are on U.S. territory, complicated the ability of witnesses located in the United States to participate in ongoing investigations. Nevertheless, various arrangements have been made under which witnesses were able to travel to third countries to meet with OTP staff and thus not encounter difficulties under the legislation.¹¹⁴

¹¹² Council of Europe, Committee of Ministers, Recommendation CM/Rec(2022)9 of the Committee of Ministers to Member States on the Protection of Witnesses and Collaborators of Justice (Adopted by the Committee of Ministers on 30 March 2022 at the 1430th meeting of the Ministers' Deputies), [https://rm.coe.int/0900001680a5fe33#:~:text=Procedural%20rules%20aimed%20at%20the,right%20to%20a%20fair%20trial.\(last visited May 7, 2025\). *A Policy Framework for Responsible Limits on Facial Recognition Use Case: Law Enforcement Investigations*, \(White Paper, Oct. 2021\), <https://www.weforum.org/publications/a-policy-framework-for-responsible-limits-on-facial-recognition-use-case-law-enforcement-investigations-revised-2022> \(last visited May 7, 2025\).](https://rm.coe.int/0900001680a5fe33#:~:text=Procedural%20rules%20aimed%20at%20the,right%20to%20a%20fair%20trial.(last%20visited%20May%207,%202025).A%20Policy%20Framework%20for%20Responsible%20Limits%20on%20Facial%20Recognition%20Use%20Case%20Law%20Enforcement%20Investigations,(White%20Paper,%20Oct.%202021),https://www.weforum.org/publications/a-policy-framework-for-responsible-limits-on-facial-recognition-use-case-law-enforcement-investigations-revised-2022)

¹¹³ See U.S. Dep't of State Press Release, Ambassador Van Schaack's Remarks at UNGA Event Protection of Victims, Witnesses, and "Insider Witnesses" in Atrocity Trials and Investigations, (Sept. 19, 2022), <https://2021-2025.state.gov/ambassador-van-schaacks-remarks-at-unga-event-protection-of-victims-witnesses-and-insider-witnesses-in-atrocity-trials-and-investigations> (last visited May 7, 2025).

¹¹⁴ *ASIL Task Force Report on Policy Options for U.S. Engagement with the ICC*, AM. SOC'Y INT'L L. TASK FORCE, at 23 (2021), <https://www.asil-us-icc-task-force.org> (last visited May 7, 2025).

The U.S. should regularize such assistance through a comprehensive agreement on witness protection and relocation with the ICC. Witnesses need this support and the U.S. is in a position to offer it in a way that is entirely consistent with U.S. priorities and national interests.

4. The United States should formally and fully re-commit to its obligations as a signatory to, and work toward eventual ratification of, the Rome Statute

As this Committee has previously recommended multiple times, the U.S. should make clear to the entire world that it will uphold its obligations as a signatory to the Rome Statute.¹¹⁵ It should also submit the treaty to the Senate for Advise and Consent toward ratification.

The first U.S. Ambassador-at-Large for War Crimes Issues,¹¹⁶ David Scheffer, signed the Rome Statute on behalf of the U.S. on December 31, 2000—the deadline established by Article 125 of the Rome Statute for States to formally sign the treaty at the UN headquarters in New York.¹¹⁷ Of the decision to sign the treaty then President Clinton noted: “We do so to reaffirm our strong support for international accountability and for bringing to justice perpetrators of genocide, war crimes, and crimes against humanity. We do so as well because we wish to remain engaged in making the ICC an instrument of impartial and effective justice in the years to come.”¹¹⁸

The United States subsequently purported to renounce its signatory obligations in a note from then Under-Secretary John Bolton to the Secretary General of the United Nations.¹¹⁹ Mr. Bolton stated in the note that the United States would have “no legal obligations arising from its signature” on the Rome Statute.¹²⁰

Although the legal effect of the Bolton letter is unclear, we believe that the United States could and should unambiguously accept obligations arising from its status as a treaty signatory under international law by sending a counter-note to the UN Secretary-General stating that it confirms its signature of December 31, 2000. Under the Vienna Convention on the Law of Treaties, this requires that the United States not act in any way that would “*defeat the object and purpose*” of the Rome Statute.¹²¹ Such an action would thus impose very minimal obligations on the United States, which already fulfills them. It would not mean that the United States is now a State Party to the Rome Statute. It would have no specific obligation of cooperation under Article 86 of the Statute, nor would it be required to contribute to the Court’s operating expenses.

Removing or replacing the Bolton note is a necessary but insufficient step to fully realize U.S. commitments to international justice. At the time the U.S. signed the Rome Statute, President

¹¹⁵ See, e.g., Letter to War Crimes Ambassador, Stephen J. Rapp and Legal Advisor Harold Koh: Recommendations for Future U.S. Policy Towards the ICC (Dec. 6, 2010), at https://ila-americanbranch.org/wp-content/uploads/2020/10/2010-12-06_ABILA_Letter_3.pdf; Letter to War Crimes Ambassador, Stephen J. Rapp and Legal Advisor Harold Koh: Recommendations for Future U.S. Policy Towards the ICC (Mar. 12, 2010), https://ila-americanbranch.org/wp-content/uploads/2020/10/2010-03-12_ICC_Letter.pdf (last visited May 7, 2025).

¹¹⁶ Now styled Ambassador-at-Large for Global Criminal Justice.

¹¹⁷ Rome Statute of the International Criminal Court, July 17, 1998.

¹¹⁸ White House Press Release, Statement by the President (Dec. 31, 2000), https://clintonwhitehouse4.archives.gov/library/hot_releases/December_31_2000.html (last visited May 7, 2025).

¹¹⁹ U.S. Dep’t of State Press Release, Letter from John Bolton to UN Secretary General Kofi Annan (May 6, 2002), <https://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm> (last visited May 7, 2025).

¹²⁰ *Id.*

¹²¹ Vienna Convention on the Law of Treaties, Art. 18, May 23, 1969, 1155 UNTS 331.

Clinton withheld a recommendation to submit the treaty to the Senate for Advice and Consent until concerns related to the protection of U.S. nationals and delineation of the crimes under the Court's jurisdiction had been satisfied. In the opinion of the U.S. representative at the treaty conference who signed the Rome Statute on behalf of the United States, Ambassador David Scheffer, the first Ambassador-at-Large for War Crimes Issues, those concerns have now been addressed, as he writes: "The time has finally arrived to acknowledge some evolutionary developments and move towards American ratification of the treaty."¹²²

The bedrock principle underlying the ICC's jurisdiction, enshrined in Article 1 of the Rome Statute, is complementarity: the concept that the Court may only intervene where a State cannot or will not to bring to justice those who bear responsibility for the gravest crimes of concern to the international community. Article 17—drafted by the U.S. representative to the negotiating conference—provides that the ICC will not proceed unless the state demonstrates an "unwillingness or inability genuinely to carry out the investigation."¹²³ Concern about the ICC's potential to investigate or prosecute U.S. nationals for genocide, crimes against humanity, war crimes, or the crime of aggression therefore exhibits an unwarranted lack of confidence in the U.S. domestic commitment or ability to confront atrocity crimes. Moreover, as a Party to the Statute, the United States would have the opportunity to nominate a U.S. judge to serve, and many qualified Americans would become eligible to join the Court's staff as legal officers, investigators, prosecutors, and important members of the Registry, the ICC's Secretariat. Conversely, remaining outside the treaty excludes most Americans from the Court.

5. The United States should provide financial support to the Trust Fund for Victims

Assuming the United States formally repudiates the Bolton letter, it should contribute to the ICC's Trust Fund for Victims (TFV). The TVF is an independent organization created in 2004 by the Assembly of States Parties, the ICC's management, legislative, and oversight body, pursuant to Article 79 of the Rome Statute.¹²⁴ The TFV operates independently from the ICC, with its own leadership, board, and mandate. It does not participate in prosecutions nor does it have authority to select cases, identify defendants, or gather evidence to establish criminal responsibility.¹²⁵ Instead, the TFV focuses on the rehabilitation of victims.

Specifically, the TFV has a twofold mandate to: (1) implement Court-ordered reparations to individual victims and communities; and (2) provide physical, psychological, and material support to victims of atrocity crimes and their families. By so doing, the TFV not only assists victims to lead full and dignified lives but "contributes to realizing sustainable and long-lasting peace by promoting restorative justice and reconciliation."¹²⁶ To date, the TFV has implemented reparations for victims

¹²² David Scheffer, *The United States Should Ratify the Rome Statute*, LIEBER INST. (July 17, 2023), <https://lieber.westpoint.edu/united-states-should-ratify-rome-statute> (last visited May 7, 2025) citing Leila Nadya Sadat, *The Conferred Jurisdiction of the International Criminal Court*, 99 NOTRE DAME L. REV. 549 (2023).

¹²³ Rome Statute, *supra* note 117, Art. 17.

¹²⁴ ASP Resolution ICC-ASP/3/Res.7 (adopted by consensus at the Sixth Plenary Meeting, Sept. 10, 2004), https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/ICC-ASP-ASP3-Res-07-ENG.pdf (last visited May 7, 2025).

¹²⁵ Int'l Crim. Ct., *Trust Fund for Victims* (last visited July 31, 2023), <https://www.icc-cpi.int/tfv#:~:text=Though%20the%20Trust%20Fund%20for,humanity%2C%20war%20crimes%20and%20aggress%20ion> (last visited May 7, 2025).

¹²⁶ *Id.*

in four cases and has assistance mandates underway or planned in seven countries (Uganda, the Central African Republic, the Democratic Republic of the Congo, Côte d'Ivoire, Mali, Georgia, and Kenya).¹²⁷

U.S. law prohibits the U.S. from providing assistance to the ICC except as outlined in the Dodd Amendment.¹²⁸ However, the ASPA states that the “term ‘International Criminal Court’ means the court established by the Rome Statute.”¹²⁹ Nothing in U.S. law prohibits funding the separate TFV; Congress has the authority to provide funds for this independent entity. Moreover, unlike the Court itself, which does not allow for “earmarked” contributions to support prosecutions or legal proceedings in certain situations, the TFV accepts restricted contributions for designated purposes.

Donating parties often reach agreements with the TFV to allocate their contributions to support for victims of particular crimes, although governments cannot earmark their contributions *per* Regulation 27.¹³⁰ Thus, while voluntary contributions cannot and should not be used as a mechanism to favor victims in certain situations and not others, they are an important tool to bolster a holistic and victim-centered approach for survivors, including, *inter alia*, survivors of sexual and gender-based violence.¹³¹

Support for the TFV is entirely consistent with the U.S.’s stated objective of standing with atrocity victims and survivors worldwide and has been deemed in the strategic interest of the United States.¹³²

Conclusion

The recent amendments to the American Servicemembers’ Protection Act and the U.S. statements regarding the ICC’s efforts in Ukraine are clear indications that support for the object and purpose of the Rome Statute is entirely consistent with U.S. interests. The time has come to demonstrate commitment to these principles in a comprehensive and unambiguous manner to help achieve justice in Ukraine and beyond.

While the path to U.S. ratification of the Rome Statute requires navigating complex domestic political realities, the moral and strategic necessity of ratification remains clear. As a global leader committed to the rule of law and human rights, the United States should join the world’s democracies in ratifying the Rome Statute and standing up for accountability and against authoritarianism.

¹²⁷ *Id.*

¹²⁸ *Supra* note 106 (Dodd Amendment).

¹²⁹ 22 U.S. Code § 7432.

¹³⁰ Resolution ICC-ASP/4/Res.3, Regulations of the Trust Fund for Victims, Annex (Dec. 3, 2005), https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/0CE5967F-EADC-44C9-8CCA-7A7E9AC89C30/140126/ICCASP432Res3_English.pdf (last visited May 7, 2025).

¹³¹ See Int’l Crim. Ct. Press Release, Trust Fund for Victims Calls for Contributions to Provide Reparations for Victims of Conflict-Related Sexual Violence (Mar. 13, 2023), <https://www.icc-cpi.int/news/trust-fund-victims-calls-contributions-provide-reparations-victims-conflict-related-sexual> (last visited May 7, 2025).

¹³² For a comprehensive analysis of these issues, see Yvonne Dutton & Milena Sterio, *The United States Can and Should Broadly Contribute to the Trust Fund for Victims*, JUST SECURITY (Feb. 16, 2023), <https://www.justsecurity.org/85156/the-united-states-can-and-should-broadly-contribute-to-the-trust-fund-for-victims-part-iv> (last visited May 7, 2025).

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ON THE APPLICATION FOR ICC ARREST WARRANTS IN THE “SITUATION IN THE STATE OF PALESTINE”

THE UNITED STATES MUST UPHOLD INTERNATIONAL JUSTICE AND RESPECT THE INDEPENDENCE OF THE INTERNATIONAL CRIMINAL COURT

May 28, 2024

Ever since the October 7, 2023, attacks by Hamas and the Israeli response thereto, the conflict in Gaza has roiled the international community and deeply traumatized the people of Israel and Palestine. On May 20, 2024, ICC Prosecutor Karim A.A. Khan, K.C. announced¹³³ that he was applying for arrest warrants against three Hamas leaders and two Israeli officials relating to the October 7, 2023, attacks and Israel’s response. While most States have welcomed the application, U.S. President Joe Biden has stated that it is “outrageous”¹³⁴ to apply for arrest warrants and U.S. Secretary of State Anthony Blinken has suggested¹³⁵ he will work with lawmakers on potential sanctions against the ICC’s “profoundly wrong-headed decision.” This response misses the mark and squanders an opportunity to bring about some accountability for victims of the atrocities committed during the conflict.

Palestine acceded to the Rome Statute on January 2, 2015, and on May 22, 2018, referred possible crimes within the ICC’s jurisdiction in Gaza, the West Bank, and East Jerusalem to the ICC Prosecutor. On February 5, 2021, Pre-Trial Chamber I found¹³⁶ that the ICC had jurisdiction over “Gaza and the West Bank, including East Jerusalem.” This means that the ICC currently has jurisdiction over anyone who commits genocide, war crimes, or crimes against humanity in those areas and any crimes committed by Palestinian nationals outside those areas.

This Committee, which was founded in 1994, has not only been active in the creation and establishment of the International Criminal Court, but has not hesitated to speak out when the situation has warranted it, to support the Court’s independence.

In recent years the ICC has confronted opposition to the pursuit of justice, by States whose nationals are on the receiving end of ICC arrest warrants or investigations, and particularly from the United States. In response to the ICC’s investigation into alleged war crimes and crimes against humanity by U.S. forces in Afghanistan, members of Congress levied threats against the ICC and its personnel. In 2020, former President Donald Trump actually imposed sanctions¹³⁷ against the ICC Prosecutor and

¹³³ Int’l Crim. Ct. Press Release, Statement of ICC Prosecutor Karim A.A. Khan KC: Applications for arrest warrants in the situation in the State of Palestine (May 20, 2024), <https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-applications-arrest-warrants-situation-state> (last visited May 7, 2025).

¹³⁴ Michael Williams, *Biden denounces ICC for ‘outrageous’ implication of equivalence between Israel and Hamas*, CNN Politics (May 20, 2024), <https://edition.cnn.com/2024/05/20/politics/biden-denounce-icc-warrant-israel-hamas/index.html> (last visited May 7, 2025).

¹³⁵ Sam Cabral et. al., *US signals support for possible ICC sanctions over Israel warrants*, BBC News (May 22, 2024), <https://www.bbc.com/news/articles/cp66e6ppzd0o> (last visited May 7, 2025).

¹³⁶ Int’l Crim. Ct. Press Release, ICC Pre-Trial Chamber I Issues its decision on the Prosecutor’s request related to territorial jurisdiction over Palestine (Feb. 5, 2021), <https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-issues-its-decision-prosecutors-request-related-territorial> (last visited May 7, 2025).

¹³⁷ Presidential Document by the Executive Office, Executive Order 13928, Blocking Property of Certain Persons Associated With the International Criminal Court (Jun. 11, 2020),

a senior member of her staff. A public outcry ensued both in the United States (including by the ABILA ICC Committee, here¹³⁸) and abroad. Eventually, the sanctions were the subject of two lawsuits in the United States, one of which¹³⁹ granted a temporary restraining order on the grounds that the sanction order was so sweeping in its provisions that its application was in likely violation of the First Amendment.

The sanctions were dropped during the Biden Administration and ultimately backfired; while they undeniably inconvenienced the ICC Prosecutor and interfered with the Court's activity, the ICC's staff were undaunted in their work and their reputation was strengthened, not diminished, as they continued to do their jobs despite U.S. pressure.

In 2021, both this Committee and ABILA's former President spoke out against the sanctions imposed by President Trump and welcomed their rescission¹⁴⁰ by President Joe Biden. When President Biden lifted¹⁴¹ the sanctions, he noted that "the threat and imposition of financial sanctions against the Court, its personnel, and those who assist it are not an effective or appropriate strategy for addressing" U.S. concerns with the Court.

Since that time, the United States has supported the Court, most fervently with respect to the Ukraine investigation and the warrants against¹⁴² Russian President Vladimir Putin and Ms. Maria Lvova-Bulova, as well as¹⁴³ Sergei Ivanovich Kobylash, a Lieutenant General in the Russian Armed Forces, and Viktor Nikolayevich Sokolov, an Admiral in the Russian Navy. In the situation of Ukraine, the United States sees the work of the Court as supporting its national self-interest and has therefore constructively engaged with the Court. Congress made it easier for the United States to provide information to the ICC, and the President ordered¹⁴⁴ those in the national security apparatus to fully cooperate with the Prosecutor. These measures recognized Prosecutor Khan's independence and competence and acknowledged that the United States has the ability to play a positive role in international criminal justice even if it is not a State Party to the Rome Statute.

With respect to the Palestine situation, the threat of sanctions clearly has not daunted Prosecutor Khan, who has demonstrated both courage and independence. Prosecutor Khan and his team knew

<https://www.federalregister.gov/documents/2020/06/15/2020-12953/blocking-property-of-certain-persons-associated-with-the-international-criminal-court> (last visited May 7, 2025).

¹³⁸ Statement by the American Branch of the International Law Association International Criminal Court Committee, The Use of U.S. Sanctions to Undermine the Work of the ICC (Oct. 1, 2020), https://ila-americanbranch.org/wp-content/uploads/2020/10/Statement_by_the_American_Branch_of_the_International_Criminal_Court_Committee_Oct._2020.pdf (last visited May 7, 2025).

¹³⁹ *Open Society Justice Initiative v. Donald J. Trump*, 20 Civ. 8121 (KPF) (2021).

¹⁴⁰ Presidential Document by the Executive Office, Executive Order 14022, Termination of Emergency with Respect to the International Criminal Court (Apr. 1, 2021), <https://ofac.treasury.gov/media/57411/download?inline> (last visited May 7, 2025).

¹⁴¹ *Id.*

¹⁴² Int'l Crim. Ct. Press Release, Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova (Mar. 17, 2023), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and> (last visited May 7, 2025).

¹⁴³ Int'l Crim. Ct. Press Release, Situation in Ukraine: ICC judges arrest warrants against Sergei Ivanovich Kobylash and Viktor Nikolayevich Sokolov (Mar. 5, 2024), <https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-sergei-ivanovich-kobylash-and> (last visited May 7, 2025).

¹⁴⁴ Charlie Savage, *Biden Orders U.S. to Share Evidence of Russian War Crimes with Hague Court*, The New York Times (Jul. 26, 2023), <https://www.nytimes.com/2023/07/26/us/politics/biden-russia-war-crimes-hague.html> (last visited May 7, 2025).

the risk of U.S. opposition and acted anyway, because the job that they accepted was to be independent and impartial in the pursuit of their mandate. As the Independent Panel of Experts that reviewed¹⁴⁵ the evidence underlying the Prosecutor's application recently wrote, there are reasonable grounds to support the allegations of war crimes and crimes against humanity in the proposed arrest warrants. Moreover, as they note, the law being applied is "humanity's law, not the law of any given side," which protects all the victims of this conflict and "all civilians in conflicts to come."

Although the United States now objects to the possibility of ICC investigations in the situation relating to the State of Palestine, international justice is not a "pick and choose" system. The law must be applied impartially to all. The United States should not stand behind the Court when it issues warrants against Russian nationals, and then seek to retaliate against it for pursuing warrants in a situation where a U.S. ally is concerned. Nor is there any "moral equivalence" implied by the Prosecutor's application to the Pre-Trial Chamber to issue warrants for individuals reasonably believed to have committed atrocity crimes. The Prosecutor's decisions are guided solely by the evidence and the law and were themselves unanimously approved by outside experts.

The ABILA ICC Committee strongly urges U.S. President Joe Biden and the U.S. Congress to refrain from attempting to interfere with the ICC's ongoing investigation in the Palestine situation and elsewhere. As General Wesley Clark (Ret.) wrote in his critique¹⁴⁶ of the Trump-era sanctions, "The United States benefits from its leading role in developing and complying with international law and from the institutions that help enforce that law."

The United States must not be seen to be attempting to manipulate the rule of law to benefit itself or its allies. Experience has shown that this is not only wrong-headed, but unproductive. The ICC—an independent, permanent judicial institution with the mandate to pursue only the worst crimes of concern to the international community—must be able to do its work free from interference or political threats.

¹⁴⁵ Sir Adrian Fulford PC et. al., *Panel of Experts in International Law – Convened by the Prosecutor of the International Court; Report*, PROS. OF THE INT'L CRIM. CT. (2024), <https://www.icc-cpi.int/sites/default/files/2024-05/240520-panel-report-eng.pdf> (last visited May 7, 2025).

¹⁴⁶ Wesley K. Clark, *The United States Has Nothing to Fear From the ICC*, Foreign Policy (Jul. 2, 2020), <https://foreignpolicy.com/2020/07/02/the-united-states-has-nothing-to-fear-from-the-icc> (last visited May 7, 2025).

INTERNATIONAL HUMANITARIAN LAW COMMITTEE **STATEMENTS**

STATEMENT ON ICC SANCTIONS

December 16, 2024

The American Branch of the International Law Association's Committee on International Humanitarian Law (ABILA – IHL Committee) opposes any effort by the United States government to impose sanctions and other retaliatory measures on the International Criminal Court ("ICC" or "Court"), any of its staff and personnel, and persons or organizations that cooperate with the Court's mission. The ABILA – IHL Committee is alarmed that the House of Representatives has passed proposed legislation (H.R. 8282) to impose such sanctions and visa restrictions on Court staff, judges, witnesses and others who provide support to the ICC.

The proposed U.S. sanctions regime against the ICC threatens to undermine America's security interests and credibility as a champion of international justice, particularly in the eyes of many U.S. allies that support the Court. These, or similar measures would put the United States at odds with most of its major allies. The sanctions also risk disrupting ongoing investigations and weakening international efforts to achieve accountability for grave human rights abuses.

This statement examines the legal obligations at stake, analyzes the practical consequences for U.S.-supported investigations, notes the threat that sanctions pose to the independence of judicial functions and the rule of law, considers these challenges within the context of the historic U.S. role and essential interest in the establishment of international justice mechanisms, and ends with recommendations.

Sanctions are Contrary to U.S. Interests and Commitments to the Rule of Law

While the United States is not a party to the Rome Statute, it has long been a proponent of accountability for international crimes, particularly where national systems are unwilling or unable to act. Sanctions are incompatible with these principles and the greater project of the international community that has, with U.S. support, established an independent judicial institution for pursuing legitimate investigations. Sanctions against the ICC would amount to a politicization of justice that challenges the integrity of the international legal order, without which there can be no international peace, security, or justice.

By penalizing ICC officials for carrying out their legal mandate, sanctions would signal to other nations that political considerations can override the rule of law. Moreover, sanctions risk creating a chilling effect on international cooperation, as states and organizations may be deterred from engaging with the ICC for fear of similar reprisals. This is particularly disturbing in view of the recent US backing for ICC investigations into Russian war crimes in Ukraine. Such selectivity is particularly debilitating to the principle of universality in international justice and furthers the perception that international law is applied because of political convenience, rather than pursuant to consistent legal standards.

Inconsistency of this type reduces the strength of the international system of the rule of law and serves perpetrators of international crimes who seek impunity from that system.

Practical Consequences

The proposed sanctions would immediately and significantly impact investigations that the United States actively supports, such as that concerning Russia/Ukraine, among others. In targeting ICC officials, judges, and personnel, the sanctions would create a climate of fear that deters cooperation and collaboration so essential to the work of the Court. Witnesses, legal experts, and investigators with critical information may be discouraged from participating for fear of retaliation. In practice, that would have a chilling effect on the ICC's ability to investigate, prosecute crimes, and render justice for victims. Resources would be diverted from investigations and prosecutions, undermining the Court's ability to address atrocities in Ukraine, Sudan, Venezuela – situations in which the U.S. rightly has an interest. This would not only harm victims through delayed or denied justice but also disrupt ongoing investigations into crimes of urgent international concern, including investigations supported by the United States. Additionally, sanctions would alienate valuable international partners and institutions.

The ICC relies on states and international organizations to effectively function through cooperation. Sanctions may inhibit other nations from actively engaging with the ICC and embolden states to shield their citizens from accountability, further undermining global efforts to combat impunity for war crimes, crimes against humanity, genocide, and the crime of waging aggressive war.

Threat to Judicial Independence and the Rule of Law

The proposed sanctions strike at the heart of judicial independence, a cornerstone of the rule of law. The ICC's mandate requires it to operate free from external interference, rendering decisions based solely on legal principles and evidence. By punishing ICC officials for fulfilling their duties, the sanctions undermine this independence, sending a dangerous message that judicial decisions can be retaliated against if they conflict with political interests.

This erosion of judicial independence would have far-reaching implications. It could weaken public trust in international legal institutions, undermine the integrity of judicial processes, and destabilize efforts to establish a consistent, impartial framework for addressing international crimes. History has shown that political interference in judicial processes breeds instability and weakens the rule of law, fueling cycles of conflict and impunity.

For victims of international crimes, the impact would be particularly devastating. The ICC was established to provide justice for those who have suffered the most egregious violations of human rights. Sanctions that target the Court's personnel and operations threaten to deny victims access to justice by undermining the institution tasked with holding perpetrators accountable. This not only harms individual victims but also undermines broader efforts to achieve reconciliation and peace in affected regions.

Historical Perspective and the U.S. Role in International Justice

The United States has historically been a key proponent of international justice, recognizing its role in promoting peace, security, and accountability. From the Nuremberg Trials to its support for ad hoc

tribunals addressing mass atrocity crimes in Rwanda and the former Yugoslavia, the U.S. has played a pivotal role in advancing the principles of international law. More recently, the United States has amended its War Crimes Act to permit prosecution of those who commit “grave breaches” of the Geneva Conventions, regardless of where the violations occur. This has enabled the United States to prosecute Russian and Syrian war criminals, consistent with our international legal obligations. These cumulative developments in the field of international criminal justice, led by and adopted by the United States, have become critical elements in the efforts of the international community to end impunity for the worst international crimes. Sanctions against the ICC, especially if imposed by the United States, would be contrary to U.S. interests, exacerbating the problem of impunity, inconsistency, and double standards.

The U.S. commitment to international justice has been driven not only by moral imperatives but also by pragmatic considerations. A robust system of international justice helps deter atrocities, fosters stability, and upholds the rule of law, which aligns with U.S. interests in global peace and security. The proposed sanctions, however, represent a departure from this tradition, undermining the very principles that have guided U.S. engagement with international justice.

To maintain its leadership in advancing global justice, the United States must reject actions that weaken the international legal system and the rule of law. Instead, it should reaffirm its commitment to supporting impartial judicial mechanisms like the ICC, recognizing their essential role in addressing the world’s most serious crimes. By doing so, the United States can ensure that its actions align with both its values and its long-term strategic interests, contributing to a world order based on justice and the rule of law.

Recommendations

To retain its leadership role in advancing justice internationally, the United States should:

1. Reject the proposed sanctions against the ICC,
2. Reiterate its commitment to support independent judicial mechanisms,
3. Engage constructively with the ICC on matters of mutual concern, and
4. Flesh out alternative approaches that would enhance, not undermine, international justice.

In implementing these recommendations, the United States can fulfill its values and long-term strategic interests, and it can help reinforce an international order in which the rule of law fosters stability, consistent with its historic leading role in pursuit of accountability for grave international crimes.

**PART IV – CONSTITUTION
AND BYLAWS**

INTERNATIONAL LAW ASSOCIATION CONSTITUTION OF THE ASSOCIATION

(adopted at the 77th Conference, 2016)

1 Definitions

In this Constitution the following words and expressions shall have the following meanings:-

“Branch” a branch of the Association established in accordance with Article 8 below;

“Conference” a conference held in accordance with Article 10 below;

“the Executive Council” the executive council of the Association described in Article 6 below;

“the Full Council” the full council of the Association described in Article 7 below;

“A Council” either the Executive Council or the full Council as defined herein;

“Headquarters Member” those members elected by the Executive Council in accordance with Article 4.1.4 below.

2 Name

The name of the Association is "The International Law Association" ("the Association"). Its seat is in London.

3 Objects and Powers

3.1 The objectives of the Association are the study, clarification and development of international law, both public and private, and the furtherance of international understanding and respect for international law.

3.2 In furtherance of such objects but not otherwise the Association may:-

3.2.1 employ any person or persons to supervise, organise and carry on the work of the Association and make all reasonable and necessary provision for the payment of pensions and superannuation to or on behalf of employees and their surviving spouses and other dependants;

3.2.2 bring together in conference individuals as well as representatives of voluntary organisations, Government departments, statutory authorities and international organisations;

3.2.3 promote and carry out or assist in promoting and carrying out research, surveys and investigations and publish the useful results of such research, surveys and investigations;

3.2.4 arrange and provide for, or join in arranging and providing for, the holding of exhibitions, meetings, lectures, classes, seminars and training courses;

3.2.5 collect and disseminate information on all matters affecting such objects and exchange such information with other bodies having similar objects whether in this country or overseas;

3.2.6 undertake, execute, manage or assist any charitable trusts which may lawfully be undertaken, executed, managed or assisted by the Association;

3.2.7 procure to be written and print, publish, issue and circulate, including through its website or otherwise online, gratuitously or otherwise, such papers, books, periodicals, pamphlets or other printed or electronic media as shall further such objects;

3.2.8 purchase, take on lease or licence or in exchange, hire or otherwise acquire any property and any rights and privileges necessary for the promotion of such objects and construct, maintain and alter any buildings or erections necessary for the work of the Association;

3.2.9 make regulations for any property which may be so acquired;

3.2.10 sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Association;

3.2.11 accept gifts and borrow or raise money for such objects on such terms and on such security as shall be thought fit;

3.2.12 procure contributions to the Association by personal or written appeals, public meetings or otherwise;

3.2.13 invest the money of the Association not immediately required for such objects in or on such investments, securities or property as may be thought fit, subject nevertheless to such conditions (if any) as may for the time being be imposed or required by law;

3.2.14 enter into contracts;

3.2.15 do all such other lawful things as are necessary or desirable for the attainment of such objects.

4 Members

4.1 The members of the Association shall be:-

4.1.1 honorary members elected by a Council;

4.1.2 individuals elected by a Branch;

4.1.3 organisations, whether corporate or unincorporated, elected by a Branch or the Executive Council; and

4.1.4 persons or organisations whether corporate or unincorporated elected by the Executive Council (to be known as "Headquarters Members").

4.1.5 a Branch, if it is a corporate body, but only on the basis stated in paragraphs 4.5, 8.7 and 10.2 below.

4.2 Each member organisation, elected as aforesaid, may appoint two individuals (the "Appointed Representatives") being members of that organisation to represent it.

4.3 Each member organisation may appoint a deputy to replace either of its Appointed Representatives if either of the Appointed Representatives is unable to attend any particular meeting of the Association.

4.4 Individual members who are engaged in full time study at a school, university, college or other education establishment may be designated student members while they continue their studies.

4.5 Members of the Association have the right to attend conferences and to vote on the affairs of the Association in accordance with and to the extent stated in paragraphs 8.7 and 10.2 only, and not otherwise.

5 Officers and Assistants

5.1 At each Conference, the Association shall elect a president ("the President"), who shall hold office until the commencement of the next Conference, and shall, on vacating office become *ex officio* a vice-president of the Association ("the Vice-President" and if more than one "the Vice-Presidents").

5.2 The Executive Council shall elect the following additional Officers and such other Officers and Assistants as the Executive Council shall from time to time decide (together "the Officers") provided, subject to Article 5(3), that 3 months' notice of the proposal to make an election at a meeting of the Executive Council shall have been given in writing by the Secretary General to the presidents of branches and to members of the Executive Council. Nominations for such election may be made by branches and by members of the Executive Council not later than one month prior to such meeting of the Executive Council and shall be circulated by the Secretary General to the presidents of branches and members of the Executive Council as soon as reasonably possible:

5.2.1 An executive chair of the International Law Association ("the Chair");

5.2.2 such number (not exceeding 4) of vice-chairs of the International Law Association as the Executive Council may from time to time elect ("the Vice-Chairs");

5.2.3 a treasurer ("the Treasurer");

5.2.4 a director of studies ("the Director of Studies"); and

5.2.5 a secretary-general ("the Secretary-General").

5.3 The Officers shall hold office for a term of four years subject to the right of the Executive Council to terminate that period of office at any time by a two-thirds majority of those present and entitled to vote at a meeting of the Executive Council. Upon the expiration of a term of office any Officer shall be eligible for re-election provided that no person shall be elected to serve more than a maximum of three full four-year terms in that office. All Officers shall serve until their successors have taken office. In the event of a vacancy occurring before the termination of an existing Officer's mandate, the Executive Council may fill that vacancy until the end of the period of the previous holder's mandate without complying with the requirements of Article 5.2.

5.4 At least three of the Officers, designated by the Chair after consultation with all the Officers, shall constitute the Trustees of the Association for the purposes of the law regulating charities in the United Kingdom.

6 The Executive Council

6.1 The powers of the Association shall be vested in the Executive Council in the intervals between Conferences.

6.2 The members of the Executive Council shall be:-

6.2.1 the President, Vice-Presidents and Patrons;

6.2.2 the Officers;

6.2.3 the ex-Chairs and ex-Vice-Chairs of the Executive Council;

6.2.4 one to three Branch members elected by each Branch in accordance with the following formula: one member for a fully paid Branch membership of fewer than 100, two members for a fully paid Branch membership between 101 and 250, and three members for a fully paid Branch membership above 250; and

6.2.5 individuals co-opted by the Executive Council.

6.3 Members appointed in accordance with Articles 6.2.4 and 6.2.5 above shall be Members for a period not exceeding four years and shall be eligible for re-election or co-option again.

6.4 The Chair shall preside at any meeting of the Executive Council. In the absence of the Chair the Vice-Chair with the longest period in office shall preside.

6.5 If a Member appointed in accordance with Article 6.2.4 cannot attend a meeting of the Executive Council, then the president of the electing Branch may appoint a substitute to attend that meeting only.

6.6 A vacancy in the Executive Council may be filled by election by the electing Branch, if the former member was appointed in accordance with Article 6.2.4, or by co-option, if the former member was appointed in accordance with Article 6.2.5. For the purposes of this Article 6.6 a vacancy shall occur by reason of resignation, death or election of that member as an Officer or President.

6.7 Eight members of the Executive Council shall constitute a quorum.

6.8 The Executive Council may appoint a Finance and Policy Committee and other special or standing committees, and it shall determine their terms of reference, powers, duration and composition.

6.9 The Executive Council shall have regard to any general direction of the Full Council.

6.10 The Executive Council shall, subject to the provisions of this Constitution, have power to settle, adopt and issue standing orders and/or rules for the Association, including standing orders or rules for the conduct of Conferences.

6.11 The Executive Council shall have power to delegate to such person or persons being members of the Association, such powers as it may resolve from time to time and for such period and on such conditions as it may resolve, in furtherance of the objectives of the Association and the conduct of its business.

6.12 The Executive Council shall have the power to consult and decide, in the interval between meetings, by electronic means, as follows:

6.12.1 Consultation: The Chair and the Secretary-General may, at the request of any Officer, propose a decision in draft form, including decisions for the approval of constitutions of new Branches in accordance with paragraph 8.5. The proposal shall include all relevant documents, request responses from members of the Executive Council, and set a reasonable deadline which shall not be less than one full week for such responses.

6.12.2 Decisions: After consultation in accordance with paragraph 6.12.1, the Chair and the Secretary-General may solicit a decision by consensus, setting a further deadline of no less than one full week for agreement on a decision in final form. If no objection is received by the deadline from any member of the Executive Council, that decision shall be taken as passed. If any objection is received by the deadline, the matter shall either be subject to further consultation, or shall be put before the Executive Council at a meeting.

6.12.3 Decisions reached by consensus shall be included in the Minutes of the next Executive Council Meeting.

7 The Full Council

7.1 The members of the Full Council shall be:

- 7.1.1 the members of the Executive Council; and
- 7.1.2 the presidents and secretaries of all Branches.

7.2 The Full Council shall meet at least once during each Conference.

7.3 Twenty members of the Full Council shall constitute a quorum.

8 Branches

8.1 Regional Branches consisting of at least ten members of the Association may be formed with the consent of the Executive Council.

8.2 The Executive Council may dissolve any Branch, or in the case of a Branch which is a corporate body may terminate its membership of the Association, where the membership of the Branch has become less than ten or if contributions are more than three years in arrears. Any Branch which has been dissolved or whose membership has terminated in this or any other way shall cease to operate or hold itself out as a Branch of or associated with the Association, and shall if necessary change its name to make clear that it is no longer a Branch of or associated with the Association.

8.3 Branches are regional. They may be composed of countries within a geographical area, a single country or a geographical area within a country. The members of a Branch may be nationals of the country or countries in their respective region, whether residing or not in such country or countries, and other persons ordinarily resident there and any organisation member which has sufficient interests or presence there.

8.4 A Branch may expel any of its members from the Branch in accordance with the procedure set out in its constitution and such member shall cease to be a member of the Association without prejudice to the position of Headquarters Members. Any expulsion by a Branch shall be reported to the Executive Council as soon as possible.

8.5 The constitutions of the Branches and any amendments thereto must be approved by the Executive Council.

8.6 Each Branch shall appoint a president and secretary and such other officers as are authorised by the constitution of the Branch.

8.7 Individual Members of Branches may attend Conferences and speak and vote there as individuals, each having one vote. The Association does not recognize delegates or delegations as such. A Branch which is a corporate body has as such no right to attend or vote at a conference.

8.8 Branches are not authorised to enter into contracts on behalf of the Association and the Association shall not be bound by any contract entered into by a Branch. The Association shall not be liable for the contracts, debts, torts, civil wrongs or any other acts or omissions of a Branch whether in connection with a Conference organised by a Branch or otherwise.

9 Patrons

The Executive Council may appoint persons who have rendered distinguished service to the Association as Patrons who shall be ex-officio members of the Executive Council.

10 Conferences

10.1 Conferences of the Association shall be held at such times and places, and on such bases as shall be decided by the Executive Council in consultation with the Branch organising the Conference. Conference agendas shall be examined and settled in consultation between the Branch organising the Conference and the Executive Council prior to the Conference.

In addition to individual Members of Branches (paragraph 8.7 above), individual Headquarters Members, Honorary Members and Appointed Representatives (or deputies of Appointed Representatives) of member organisations may attend, speak and vote at Conferences, each having one vote.

10.2 There shall be paid to the Branch of the Association organising the Conference, by every individual Member and every Appointed Representative or his or her deputy attending that Conference as well as by any non-Member who may be permitted to attend and for each person accompanying such Member, Appointed Representative, deputy or non-Member, such fee as shall be determined by the Branch organising the Conference in consultation with the Executive Council ("the Conference Fee").

10.3 A report of each Conference shall be published as soon as possible after the Conference in accordance with guidelines laid down from time to time by the Executive Council.

11 Contributions

11.1 Each Branch member shall pay a subscription to the Branch of such amount as the Branch shall from time to time determine.

11.2 Each Branch shall pay to the Treasurer an annual subscription of such amount and at such time as the Executive Council shall determine in respect of each Branch member.

11.3 The Executive Council may set reduced subscription fees for new Branches or for Branches situated in the less developed countries, and may waive or reduce the fees payable to the Treasurer in respect of student members, on such conditions as it decides.

11.4 Headquarters Members shall pay such annual subscription as the Executive Council shall determine.

11.5 Only Members who have paid their Conference Fees shall be entitled to attend a Conference as Members. Members who are in arrears with their subscriptions may not vote on any resolutions put before that Conference.

12 Official Languages

The official languages of the Association shall be English and French. Each Member may write or speak at any Conference or Meeting of the Association or any of its Committees in either of the official languages.

13 Expenditure

No expenditure shall be made, and no liability incurred, in excess of the available funds of the Association.

14 Amendment of the Constitution

The Constitution of the Association may be amended at any Conference by a vote of two-thirds of the members present, three months' previous notice having been given in writing to the Executive Council of the motion to amend the terms, provided that no alteration shall be made which would have the effect of causing the Association to cease to have the status of a charity at law.

CERTIFICATE OF INCORPORATION

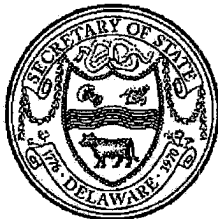
Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION", FILED IN THIS OFFICE ON THE TWENTY-SECOND DAY OF OCTOBER, A.D. 2012, AT 11:51 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE KENT COUNTY RECORDER OF DEEDS.



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You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 9935512

DATE: 10-23-12

CERTIFICATE OF INCORPORATION

OF

THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION

**A NONSTOCK CORPORATION ORGANIZED UNDER
THE GENERAL CORPORATION LAW OF THE STATE OF DELAWARE**

ARTICLE I

The name of the corporation is The American Branch of the International Law Association. Subject to the approval of the member or members of the corporation, the corporation shall become a branch of the International Law Association, an unincorporated association registered as a charity under the laws of England and Wales (the "ILA"), and the successor to the unincorporated association known as The American Branch of the International Law Association. This Certificate shall be deemed the constitution of the corporation under the constitution of the ILA.

ARTICLE II

The address of the corporation's registered office in the State of Delaware is c/o Registered Agent Solutions, Inc. 1679 S. Dupont Hwy., Suite 100, in the City of Dover, County of Kent, 19901. The registered agent of the corporation at such address is Registered Agent Solutions, Inc.

ARTICLE III

The corporation is a nonprofit corporation organized exclusively for charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), or the corresponding provision of any subsequent federal tax law, including, but not limited to, the following:

- (1) to further, in cooperation with the ILA, the education of academic scholars and practitioners in the field of international law, public and private;
- (2) to promote, in cooperation with the ILA, the study, discussion, development and advancement of international law; and
- (3) to engage, in furtherance of the foregoing, in any and all lawful activities for which a corporation may be organized under the General Corporation Law of the State of Delaware (the "DGCL"), except as restricted herein or in the bylaws of the corporation.

Notwithstanding any provision of this Certificate or any provisions of applicable state law to the contrary, the corporation is not authorized (a) to make any payments or distributions or otherwise carry on any activities, which would cause it to fail to qualify, or to continue to qualify, as (i) an organization exempt from federal income tax under section 501(c)(3) of the Code, or (ii) an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code, or (b) to accept gifts or contributions for other than the charitable purposes stated above.

ARTICLE IV

The corporation is not organized for pecuniary profit or financial gain, and no part of the earnings or assets of the corporation shall ever inure to the benefit of or be distributable to any individual having a personal or private interest in the activities of the corporation. No member, Director (as defined below), officer or employee of the corporation is entitled or permitted to receive any pecuniary profit from the operations and activities of the corporation, except reimbursement of out-of-pocket expenditures incurred

in carrying out the exempt purposes of the corporation and reasonable compensation for services actually rendered to or on behalf of the corporation.

ARTICLE V

Under no circumstances may the corporation (a) carry on propaganda or otherwise attempt to influence legislation in a manner that would subject the corporation to any tax imposed by section 4911 of the Code, or (b) participate in, or intervene in (including by the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office or engage in any activities which would characterize it as an "action organization" as defined in Treasury Regulation section 1.501(c)(3)-1(c)(3). No substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code, whether pursuant to an election under section 501(h) or otherwise.

ARTICLE VI

The corporation is a nonstock corporation and has no authority to issue capital stock.

ARTICLE VII

The member or members of the corporation shall be those persons, institutions, firms, associations or corporations meeting such conditions of membership as shall be set forth in the bylaws. Each member of the corporation, whether a natural person, an institution, a firm, an association or a corporation, shall be entitled to one vote on each matter submitted to a vote of members at any meeting of members of the corporation. Each member of the corporation entitled to vote at a meeting of members of the corporation may authorize another person or persons to act for such member by proxy. A member of the corporation may revoke any proxy that is not by law irrevocable by attending the meeting and voting in person or by filing with the Secretary either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date. Each proxy shall be deemed to have expired, and no such proxy shall be voted, after six months from its date of execution unless such proxy provides on its face for a longer period.

ARTICLE VIII

The governing body of the corporation shall be known as the Board of Directors, and its members shall be known as Directors. Except as otherwise provided by the DGCL, the business and affairs of the corporation shall be managed by or under the direction of the Board of Directors.

The Board of Directors shall consist of the current Principal Officers of the corporation (as designated by or in the manner provided for in the bylaws; provided that the Principal Officers of the corporation shall include the president and the secretary of the corporation), the immediate past president of the corporation acting as the chairperson of the Board of Directors, and the honorary vice-presidents of the corporation, each *ex officio* (each of the foregoing, an "Ex Officio Director") and such number of Directors, not fewer than ten nor more than twenty, as may be fixed from time to time by the Board of Directors (the "At-Large Directors"). Election of Directors shall take place at each annual meeting of members of the corporation that takes place in an even-numbered year and shall be conducted in the manner provided for in the bylaws. Except as otherwise provided by this Certificate, any vacancies occurring in the Board of Directors may be filled as provided in the bylaws. Any At-Large Director may be removed at any time, and any *Ex Officio Director* may be removed at any time from the position or office giving rise to such *Ex Officio Directorship*, either for or without cause, upon the affirmative vote of not less than a majority of the members of the corporation present in person or by proxy at a meeting of members of the corporation. Any vacant At-Large Directorship or position or office giving rise to an *Ex Officio Directorship* that is created by such removal may be filled by a vote of the members of the corporation present in person or by proxy at such meeting, or in lieu thereof as provided by the bylaws.

At all meetings of the Board of Directors, the presence of seven Directors shall constitute a quorum for the transaction of business. An absence of quorum that occurs after a meeting of the Board has begun shall not preclude the transaction of business, provided, that an act of the Board shall in all cases

require an affirmative vote by the greater of (a) four Directors and (b) such vote as is otherwise required by law, this Certificate or the bylaws of the corporation.

Any action required or permitted to be taken at any meeting of the Board of Directors may be taken without a meeting if a majority of members of the Board of Directors consent thereto in writing or by electronic transmission and such writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board of Directors; provided, that no such action without a meeting shall be effective if any member of the Board of Directors who has not consented to such action shall have transmitted to the president or secretary of the corporation his or her objection to such action, in writing or by electronic transmission, within ten days of his receipt of notice of such action.

The Board of Directors and the corporation shall have such sections and other committees, with such memberships and powers, as may be provided in the bylaws. The bylaws may delegate to the president of the corporation the power to establish and appoint or alter the membership of any committee of the Board of Directors or of the corporation.

The following persons shall serve as the initial Directors of the corporation, either *ex officio* or until their respective successors are duly elected and qualify, or until their earlier death, resignation or removal:

<u>Name</u>	<u>Ex Officio Position or At-Large Status</u>	<u>Mailing Address</u>
John E. Noyes	Chair	California Western School of Law 225 Cedar Street San Diego, CA 92101-3113
Ruth Wedgwood	President	11510 Lake Potomac Dr. Potomac, MD 20854
Valerie Epps	Vice-President	Suffolk University School of Law 120 Tremont Street Boston, MA 02114
Gary N. Horlick	Vice-President	1330 Connecticut Ave. NW Suite 219 Washington DC 20008
Philip M. Moremen	Vice-President	Seton Hall University, Whitehead School 400 S. Orange Ave. South Orange, NJ 07079
Leila N. Sadat	Vice-President	Washington University School of Law Campus Box 1120 One Brookings Drive St. Louis, MO 63130-4899
David P. Stewart	Vice-President	Georgetown University Law Center 600 New Jersey Ave NW Washington, DC 20001
Houston Putnam Lowry	Secretary	Brown & Welsh, P.C. Meriden Executive Park 530 Preston Avenue Meriden, CT 06450-0183
Charles N. Brower	Honorary Vice-President	White & Case LLP 701 13 St NW Washington, DC 20005
Edward Gordon	Honorary Vice-President	325 Sharon Park Dr. #809 Menlo Park, CA 94025

<u>Name</u>	<u>Ex Officio Position or At-Large Status</u>	<u>Mailing Address</u>
P. Nicholas Kourides	Honorary Vice-President	27 Polly Park Road Rye, NY 10580
Luke T. Lee	Honorary Vice-President	6624 River Road Bethesda, MD 20817
Cynthia Lichtenstein	Honorary Vice-President	22 Water Street Stonington, CT 06378
John F. Murphy	Honorary Vice-President	Villanova University School of Law Villanova, PA 19085-1682
James A. R. Nafziger	Honorary Vice-President	Willamette University School of Law 245 Winter St. NE Salem, OR 97301
Ved Nanda	Honorary Vice-President	Director, Int'l Legal Studies Program University of Denver College of Law 2255 East Evans Avenue Denver, CO 80208
Cecil J. Olmstead	Honorary Vice-President	4 Sprucewood Lane Westport, CT 06880-4021
Alfred P. Rubin	Honorary Vice-President	228 Slade St. Belmont MA 02478
Robert B. von Mehren	Honorary Vice-President	Debevoise & Plimpton LLP 919 Third Ave. New York, NY 10022
William Aceves	At-Large	California Western School of Law 225 Cedar Street San Diego, CA 92101-3046
Catherine Amirfar	At-Large	Debevoise & Plimpton LLP 919 Third Ave. New York, NY 10022
Dr. Kelly Askin	At-Large	Senior Legal Officer International Justice Open Society Justice Initiative 400 W. 59th St. New York, NY 10019
Andrea K. Bjorklund	At-Large	UC Davis School of Law 400 Mrak Hall Drive Davis, CA 95616
Ronald A. Brand	At-Large	Director, Center for Int'l Legal Education University of Pittsburgh School of Law 3900 Forbes Avenue Pittsburgh, PA 15260
John Carey	At-Large	860 Forest Avenue Rye, NY 10580
Christina M. Cerna	At-Large	550 N Street SW Apt #S-901 Washington, DC 20024

<u>Name</u>	<u>Ex Officio Position or At-Large Status</u>	<u>Mailing Address</u>
Paul R. Dubinsky	At-Large	Wayne State University Law School 471 West Palmer St. Detroit, MI 48202
Malvina Halberstam	At-Large	Benjamin N. Cardozo School of Law 55 Fifth Ave. at 12th Street New York, NY 10003
Scott Horton	At-Large	Human Rights First 333 Seventh Ave. 13 Fl. New York NY 10001-5108
Karen A. Hudes	At-Large	5203 Falmouth Rd. Bethesda, MD 20816
Larry Johnson	At-Large	141 East 88th St., Apt. 3H New York, NY 10128
Anibal Sabater	At-Large	Fulbright Tower 1301 McKinney Suite 5100 Houston, TX 77010-3095
Michael P. Scharf	At-Large	13 Pepperwood Lane Pepper Pike, OH 44124
Louise Ellen Teitz	At-Large	Roger Williams University School of Law Ten Metacom Avenue Bristol, Rhode Island 02809
Nancy Thevenin	At-Large	Baker & McKenzie LLP 1114 Avenue of the Americas New York, NY 10036
Susan Tiefenbrun	At-Large	2683 Via dela Valle #G-514 Del Mar, CA 92014
Vince Vitkowsky	At-Large	Edwards Wildman Palmer LLP 750 Lexington Avenue New York, NY 10022
George Walker	At-Large	Wake Forest University School of Law PO Box 7206 Winston-Salem, NC 27109-7206
Peter K. Yu	At-Large	Drake University Law School 2507 University Avenue Des Moines, IA 50311

ARTICLE IX

No Director of the corporation has any liability to the corporation or its members for monetary damages for breach of such director's fiduciary duty as a Director. The preceding sentence does not eliminate or limit the liability of a Director (a) for any breach of the Director's duty of loyalty to the corporation or its members, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) under Section 174 of the DGCL (imposing certain penalties in the case of willful or negligent violation of certain provisions of the DGCL with regard to payment of dividends to members, and in the case of stock corporations of certain other dispositions of corporate stock) or (d) for any transaction from which the Director derived an improper personal benefit.

ARTICLE X

Bylaws may be adopted, amended, altered or repealed by a majority vote of the members of the corporation present in person or by proxy at a meeting of members of the corporation or by resolution adopted by the Board of Directors.

ARTICLE XI

The corporation shall not, at any time, allow to remain outstanding total indebtedness in excess of the net worth of the corporation or incur any financial or other obligation that would cause the corporation to have a total outstanding indebtedness in excess of the corporation's net worth.

If there is a liquidation, dissolution or winding up of the affairs of the corporation, whether voluntary, involuntary or by operation of law, the Board of Directors shall, except as may be otherwise provided by applicable law, distribute all of the assets of the corporation in such manner as the Board of Directors may determine so long as the distribution is (a) solely in furtherance of the objectives and purposes set forth in Article III of this Certificate and (b) is made to one or more organizations that are exempt from taxation as organizations described in section 501(c)(3) of the Code.

ARTICLE XII

This Certificate may be amended by a three-fourths affirmative vote of those members of the corporation who are present at a meeting of the members of the corporation (provided that a notice setting forth the proposed amendment or amendments shall have been sent to the members of the corporation such member at least twenty days prior to such meeting) and the filing of a certificate of amendment in accordance with the requirements of the DGCL.

This Certificate may not be amended to authorize the Board of Directors to manage or conduct the operations or affairs of the corporation in any manner or for any purpose that would cause the corporation to fail to qualify or continue to qualify as an organization exempt from federal income tax under section 501(c)(3) of the Code or an organization contributions to which are deductible under sections 170, 2055 and 2522 of the Code.

ARTICLE XIII

This Certificate shall be effective on the date it is filed with the office of the Secretary of State of the State of Delaware.


ARTICLE XIV

The name and mailing address of the incorporator are as follows:

Sean P. Neenan
Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022

The powers of the incorporator shall terminate upon the filing of this Certificate with the office of the Secretary of State of the State of Delaware.

I, THE UNDERSIGNED, for the purpose of forming a nonstock, nonprofit corporation under the laws of the State of Delaware, do make, file and record this Certificate of Incorporation, and do certify that the facts herein stated are true, and have accordingly hereunto set my hand this 22nd day of October, 2012.



Sean P. Neenan

BYLAWS OF THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION

[Adopted on October 9, 2018]

ARTICLE I

NAME

Section 1.01. Name. The name of this corporation is The American Branch of the International Law Association (the "Corporation"). The Corporation was incorporated under the General Corporation Law of the State of Delaware (the "DGCL") in 2012 to become, subject to the approval of the member or members of the Corporation (the "Members"), the successor to the unincorporated association The American Branch of the International Law Association (the "Association"), which was organized in 1922 as a branch of the International Law Association, an unincorporated association registered as a charity under the laws of England and Wales (the "ILA").

ARTICLE II

MEMBERS

Section 2.01. Members.

(a) The Members shall be those persons satisfying the conditions of Membership set forth herein. Each Member, whether a natural person, an institution, a firm, an association or a corporation, shall be entitled to one vote on each matter submitted to a vote of Members at any meeting of Members (such vote, in the case of a Member that is not a natural person, to be cast by such Member's designee). Except as otherwise provided in the certificate of incorporation, the initial Member shall be the Association. Upon the occurrence of both (i) conveyance by the Association to the Corporation, and assumption by the Corporation from the Association, of all the property, real, personal, and mixed, tangible and intangible; rights; credits; and choses in action then belonging to the Association and (ii) succession by the Corporation to the liability of the Association for any and all debts and obligations theretofore incurred by the Association then outstanding, including, without limitation, by the assignment and novation to the Corporation of all contracts then in effect to which the Association is a party (both (i) and (ii) collectively, the "Reorganization"), the Association shall immediately cease to be a Member and the Members shall, as of the completion of the Reorganization, be those individuals, institutions, firms, associations and corporations who, immediately prior to the Reorganization, were members of the Association.

(b) Each Member, other than the Association as initial Member prior to the Reorganization, shall, by virtue of such Membership, also become a member of the ILA without further payment of dues and shall be entitled to receive all of the current publications and reports of the ILA.

Section 2.02. Applications for Membership.

(a) Any individual, institution, firm, association or corporation that is eligible for membership in the ILA may apply to become a Member by submitting a written application to the secretary of the Corporation (the "Secretary"). The Corporation's board of directors (the "Board") and each of its members, a "Director") may prescribe a form for such an application. Such individual, institution, firm, association or corporation shall become a Member upon the approval of such application by the Board and the payment of any applicable Membership dues.

(b) Any individual, institution, firm, association or corporation that is eligible for membership in the ILA may become a Member upon an affirmative vote of the Members and the payment of any applicable Membership dues.

(c) A member of the ILA who resides or has business within the United States may become a Member by submitting a request in writing to the Secretary to be enrolled as a Member and by payment of any applicable Membership dues. The Board may prescribe a form for such an enrollment request.

Section 2.03. Membership Dues. Membership dues may be established from time to time by the Board for Members.

Section 2.04. Termination.

(a) Members may terminate their status as such by written resignation at any time, but resignation shall not relieve such individuals of the obligation to pay any unpaid Membership dues.

(b) Failure to pay Membership dues shall result in termination of status as a Member.

Section 2.05. Meetings of Members.

(a) An annual meeting of Members (an “Annual Meeting”) for the transaction of business shall be held each year either within or without the State of Delaware on such date and at such place and time, if any, as are designated by resolution of the Board. Election of Directors shall take place at each Annual Meeting that occurs in an even-numbered year (each, a “Biennial Meeting”). [DGCL §§ 215(a), 211(b)]¹

(b) A special meeting of the Members (a “Special Meeting”) for any purpose may be called at any time by the Board or by the president of the Corporation (the “President”), or upon the written request of not less than ten percent of Members, to be held either within or without the State of Delaware on such date and at such time and place as are designated by resolution of the Board or, if in lieu thereof, in the notice of such Special Meeting. [DGCL § 211]

(c) The Secretary shall cause notice of each meeting of Members including the Annual Meeting to be given to each Member entitled to vote at such meeting in writing (i) by electronic transmission or (ii) by first class mail postage prepaid to such Member’s postal address as shown on the records of the Corporation, not less than twenty days nor more than fifty days prior to such meeting except where a different notice period is required by law. Such notice shall specify (i) the place, if any, date and time of such meeting, (ii) the means of remote communications, if any, by which Members and proxy holders may be deemed to be present in person and vote at such meeting, (iii) in the case of a Special Meeting, the purpose or purposes for which such meeting is called and (iv) such other information as may be required by law or as may be deemed appropriate by the Board. Except as otherwise provided by law, the quorum for a meeting of Members shall be that number of Members present either in person or by proxy at any meeting of Members. Unless otherwise required by law, the certificate of incorporation or these bylaws, the Members shall act by a vote of a majority of the Members present at any meeting at which a quorum is present and entitled to vote on the matter. The Board may establish additional rules for conducting or adjourning a meeting of Members to the extent consistent with the DGCL, the certificate of incorporation and these bylaws.

¹ [The citations at the end of sections, as well as this footnote, are inserted for reference and assistance in administration only, and do not constitute a part of the bylaws.]

(d) The record date for determining Members eligible to vote for any meeting of Members shall be the close of business on the day prior to the sending of notice to Members or, if all Members waive notice, the date of such meeting. Each Member entitled to vote at a meeting of Members may authorize another person or persons to act for such Member by proxy. A Member may revoke any proxy that is not by law irrevocable by attending the meeting and voting in person or by filing with the Secretary either an instrument in writing revoking the proxy or another duly executed proxy bearing a later date. Each proxy shall be deemed to have expired, and no such proxy shall be voted, after six months from its date of execution unless such proxy provides on its face for a longer period.

(e) A waiver of notice of meeting by a Member provided to the Corporation in writing or by electronic transmission, whether given before or after the meeting time stated in such notice, is deemed equivalent to notice. Attendance of a Member at a meeting is a waiver of notice of such meeting, except when the Member attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business at the meeting on the ground that the meeting is not lawfully called or convened. [DGCL § 229]

Section 2.06. Annual Reports. At each Annual Meeting, the Board shall present a report, verified by the President and the treasurer of the Corporation (the “Treasurer”) or by a majority of the Board, or certified by a certified public accountant or by a firm of such accountants selected by the Board, showing in detail the following:

(a) the assets and liabilities, including the trust funds, of the Corporation as of the end of the last twelve month fiscal period terminating prior to such meeting;

(b) the principal changes in assets and liabilities, including trust funds, during the period from the end of the last twelve month fiscal period to a recent date prior to the date of the report;

(c) the revenues or receipts of the Corporation, both unrestricted and restricted to particular purposes, and the expenses or disbursements of the Corporation, for both general and restricted purposes, for the last twelve month fiscal period terminating prior to such meeting and for the subsequent period ending on a recent date prior to the date of the report; and

(d) the number of Members as of the date of the report, together with a statement of increase or decrease in such number during the year immediately preceding the date of the report.

There shall also be presented at each Annual Meeting such reports of officers and committees as may be requested by the Board or as may be submitted at the meeting by such officers or by representatives of such committees.

ARTICLE III

BOARD OF DIRECTORS

Section 3.01. General Powers. Except as may otherwise be provided by law or by its certificate of incorporation, the business and affairs of the Corporation shall be managed by or under the direction of the Board, which shall be, and shall possess all the powers of, the “governing body” of the Corporation under the DGCL. The Directors shall act only as a Board, and the individual Directors shall have no power as such. [DGCL § 141(a)]

Section 3.02. Number of Directors. There shall initially be the number of Directors set forth in the certificate of incorporation. Except as otherwise provided in the certificate of incorporation, the Board may from time to time authorize, by resolution adopted by the affirmative vote of Directors constituting a majority of the total number of Directors at the time of such vote, a change in the number of At-Large Directors (as defined in the certificate of incorporation). Each of the Directors shall be a natural person. If the Board appoints any additional Principal Officers (as defined below), an honorary president or any additional honorary vice presidents under Section 4.01, such persons shall become Directors *ex officio* and the size of the Board shall increase accordingly. [DGCL § 141(b)]

Section 3.03. Election of Directors. The initial Directors shall be the persons named in the certificate of incorporation. Each initial Director who is also a Principal Officer shall serve until the conclusion of his or her term or terms of office as specified in these bylaws, or until his or her earlier death, resignation or removal. The initial Director who is also the Chair (as defined below) shall serve until the conclusion of the term of office of the then-current President, or until his or her earlier death, resignation or removal. Each initial At-Large Director shall serve until the Biennial Meeting held in the year 2014 (at which time such At-Large Director shall be eligible for re-election), or until his or her earlier death, resignation or removal. Except as otherwise provided in Section 3.12 and Section 3.14 of these bylaws, the At-Large Directors shall be elected at each Biennial Meeting, by a vote of a majority of the Members present at such meeting either in person or by proxy. Each At-Large Director shall hold office until his or her successor has been duly elected and qualified, or until his or her earlier death, resignation or removal. Each Principal Officer and the Chair (each of the foregoing, an “*Ex Officio Director*”) shall cease to be an *Ex Officio Director* upon ceasing to be a Principal Officer or the Chair. Any Director who shall have failed to attend any meeting of the Board since the last Annual Meeting shall be ineligible for re-election (whether as an At-Large Director or to a position or office giving rise to an *Ex Officio Directorship*) unless such Director shall have delivered to the President or the Secretary a written explanation for such nonattendance.

Section 3.04. Meetings of the Board. The annual meeting of the Board for the transaction of such business as may properly come before the meeting shall be held each year either within or without the State of Delaware on such date and at such time and place, if any, as are designated by resolution of the Board. The Board shall also meet whenever called by the President, the Chair, the president-elect of the Corporation (the “*President-Elect*”) or any vice president of the Corporation (each, a “*Vice President*”), or upon written demand of not less than five Directors, at such place, date and time, if any, as may be specified in the respective notices of such meetings. Any business may be conducted at a meeting so called. [DGCL § 141(g)]

Section 3.05. Notice of Meetings; Waiver of Notice.

(a) Notice of each meeting of the Board shall be given to each Director, and notice of each resolution or other action affecting the date, time and place of one or more regular meetings shall be given to each Director not present at the meeting adopting such resolution or other action (subject to Section 3.08 of these bylaws). Such notices shall be given personally or by electronic transmission at least fifteen days prior to the meeting, or by a writing delivered by a recognized overnight courier service dispatched at least sixteen days prior to the meeting, or by regular mail (postage prepaid) dispatched at least twenty days prior to the meeting, directed to each Director by such means of electronic transmission, or at such address, as the case may be, from time to time designated by such Director to the Secretary. Notwithstanding the above, nothing in this Section 3.05(a) shall require advance notice to be given of any resolution or action not affecting the date, time and place of one or more regular meetings.

(b) A written waiver of notice of meeting signed by a Director or a waiver by electronic transmission by a Director, whether given before or after the meeting time stated in such notice, is deemed equivalent to notice. Attendance of a Director at a meeting is a waiver of notice of such meeting, except when the Director attends a meeting for the express purpose of objecting at the beginning of the meeting to

the transaction of any business at the meeting on the ground that the meeting is not lawfully called or convened. [DGCL § 229]

Section 3.06. Quorum; Voting. At all meetings of the Board, the presence of seven Directors shall constitute a quorum for the transaction of business. Except as otherwise required by law, the certificate of incorporation or these bylaws, the vote of a majority of the Directors present at any meeting at which a quorum (as defined in the certificate of incorporation) is present shall be the act of the Board. An interested Director may be counted in determining the presence of a quorum at a meeting of the Board that discusses, or authorizes as provided in Section 3.13 of these bylaws, a contract or transaction in which such Director is interested. An absence of quorum that occurs after a meeting of the Board has begun shall not preclude the transaction of business, provided, that an act of the Board shall in all cases require an affirmative vote by the greater of (a) four Directors and (b) such vote as is otherwise required by law, the certificate of incorporation or these bylaws. [DGCL §§ 141(b), 144(b)]

Section 3.07. Presence by Telephonic Communications. Members of the Board may participate in any meeting of the Board by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation in a meeting by such means shall constitute presence in person at such meeting, provided those members of the Board so participating shall have given the President not less than five days' advance notice of their desire to participate in such meeting remotely. Any expenses of remote participation in a meeting of the Board shall be borne equally by each of the members of the Board participating remotely, absent a determination by the Board that the Corporation shall cover such expenses. [DGCL § 141(i)]

Section 3.08. Adjournment. A majority of the Directors present may adjourn any meeting of the Board to another date, time or place, whether or not a quorum is present. No notice need be given of any adjourned meeting unless (a) the date, time and place of the adjourned meeting are not announced at the time of adjournment, in which case notice conforming to the requirements of Section 3.05 of these bylaws shall be given to each Director, or (b) the meeting is adjourned for more than 24 hours, in which case the notice referred to in clause (a) shall be given to those Directors not present at the announcement of the date, time and place of the adjourned meeting. At any adjourned meeting, the Directors may transact any business that might have been transacted at the original meeting.

Section 3.09. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a majority of members of the Board consent thereto in writing or by electronic transmission and such writing or writings or electronic transmissions are filed with the minutes of proceedings of the Board; provided, that no such action without a meeting shall be effective if any member of the Board who has not consented to such action shall have transmitted to the President or Secretary his or her objection to such action, in writing or by electronic transmission, within ten days of his or her receipt of notice of such action. [DGCL §§ 141(f), 141(j)]

Section 3.10. Regulations. To the extent consistent with applicable law, the certificate of incorporation and these bylaws, the Board may adopt such rules and regulations for the conduct of meetings of the Board and for the management of the affairs and business of the Corporation as the Board may deem appropriate. The immediate past President shall serve as chairperson of the Board (the "Chair") during the term or terms of his or her successor as President, or until his or her earlier death, resignation or removal. In the absence or disability of the Chair, the President shall serve as chairperson of the Board. In the absence or disability of both the Chair and the President, the President-Elect shall serve as chairperson of the Board.

Section 3.11. Resignations of Directors. Any Director may resign at any time by delivering a written notice of resignation signed by such Director or by submitting an electronic transmission, to the

Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. [DGCL § 141(b)]

Section 3.12. Removal of Directors. Any At-Large Director may be removed at any time, either for or without cause, upon the affirmative vote of not less than a majority of the Members present in person or by proxy at a meeting of Members, and such removal shall take effect immediately upon such vote. Any vacancy in the Board caused by any such removal may be filled at such meeting or in accordance with Section 3.14 of these bylaws. Any *Ex Officio* Director may be removed at any time in accordance with Section 4.03 of these bylaws. [DGCL §§ 141(j), 141(k), 223]

Section 3.13. Conflicts of Interest. Any contract or transaction in which a Director is interested must be approved by the Board acting in good faith through the affirmative vote of a majority of the disinterested Directors then members of the Board (being not less than two Directors) or by a committee made up of at least three disinterested Directors after disclosure to the Board or the committee of all material facts as to the Director's relationship to or interest in the contract or transaction and as to the nature of the contract or transaction, and the fact that an interested Director participated in meetings discussing or approving any such contract or transaction shall not make the approval void or voidable.

(a) No contract or transaction between the Corporation and one or more of its Directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers, are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or officer is present at or participates in the meeting of the Board or committee that authorizes the contract or transaction, or solely because any such Director's or officer's votes are counted for such purpose, if:

(i) The material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or

(ii) The material facts as to the Director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Members; or

(iii) The contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee or the Members.

(b) Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

Section 3.14. Vacancies and Newly Created Directorships. If any vacancies shall occur in the Board, by reason of death, resignation, removal or otherwise, or if the authorized number of Directors shall be increased, the Directors then in office shall continue to act. Any such vacancy (other than a vacancy of an *Ex Officio* Directorship, which shall be filled in accordance with Section 4.03 of these bylaws) or newly created Directorships may be filled either (a) by election at the next Annual Meeting or (b) by election by a majority of the Directors then in office, although less than a quorum, or by a sole remaining Director (the newly elected Director, in the case of either (a) or (b), a "Replacement Director"). Any Replacement Director shall hold office for the balance of the unexpired term of the replaced Director or the newly created Directorship and until his or her successor shall be elected and qualified (or until his or her earlier death, resignation or removal). [DGCL § 223]

Section 3.15. Compensation. The Directors shall not be compensated for their services as such but the Board may by resolution determine the expenses in the performance of such services for which a Director is entitled to reimbursement. [DGCL § 141(h)]

Section 3.16. Reliance on Accounts and Reports, etc. In the performance of his or her duties, a Director shall be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of its officers or employees or by any other person as to the matters the Director reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation. [DGCL § 141(e)]

ARTICLE IV

OFFICERS

Section 4.01. Officers. The officers of the Corporation shall include a President, five Vice Presidents, a Secretary, a Treasurer and, from time to time, a President-Elect (each, a "Principal Officer"). The Board may also elect such other Principal Officers or other officers as the Board may determine. In addition, the Board from time to time may, by a vote of a majority of the total number of Directors, delegate to any Principal Officer the power to appoint subordinate officers or agents and to prescribe their respective rights, terms of office, authorities and duties. One person may hold any two Principal Offices, except that no individual holding the office of President, President-Elect or Secretary may at the same time hold another of such offices. The Board may also elect an honorary president and one or more honorary vice presidents to serve at the pleasure of the Board. None of the positions of Chair, honorary president or honorary vice president shall be deemed officers of the Corporation, notwithstanding any provision of these bylaws to the contrary. Each officer of the Corporation shall be a natural person. [DGCL § 142(a), (b)]

Section 4.02. Election of Officers.

(a) The Vice Presidents, the Secretary and the Treasurer shall be elected by and from among the Members at each Biennial Meeting, and shall hold office for a term expiring at the next succeeding Biennial Meeting or until their successors are elected or until their earlier death, resignation or removal. If such officers are not elected at such Biennial Meeting, such officers may be elected at any other meeting of the Members.

(b) At any Biennial Meeting, the then-serving President shall remain in office if (i) there is no President-Elect or (ii) he or she is re-elected by the Members; provided, however, that, as of such Biennial Meeting, a then-serving President who has held office since a date prior to the date of the Biennial Meeting next preceding shall not be eligible for re-election.

(c) At each Annual Meeting, if there is no President-Elect, a President-Elect may be elected from by and from among the Members, and shall hold office until he or she succeeds to the office of President or until his or her earlier death, resignation or removal. If there is no President-Elect and a President-Elect is not elected at an Annual Meeting, a President-Elect may be elected at any other meeting of the Members. If, at any time, there is no President-Elect and the then-serving President has held office since a date prior to the Biennial Meeting next preceding, a Special Meeting shall be called, to be held not less than four months prior to the Biennial Meeting next following, at which a President-Elect shall be elected from among and by the Members.

(d) The President-Elect shall succeed to the office of President at any Biennial Meeting at which the then-serving President is not re-elected or is not eligible for re-election, or upon the then-serving

President's earlier death, resignation or removal. Except in cases of the then-serving President's death or removal, the then-serving President shall thereupon become the Chair, and shall serve in that capacity for the duration of his or her successor's Presidency, or until his or her earlier death, resignation or removal.

(e) The initial President, initial Vice Presidents, initial Secretary and initial Chair, and the initial President-Elect, if any, shall be those individuals named as such in the Certificate of Incorporation, each to serve for a term expiring at the Biennial Meeting held in 2014 or until such officer's earlier death, resignation or removal.

(f) Officers and agents appointed pursuant to delegated authority as provided in Section 4.01 (or, in the case of agents, as provided in Section 4.06) of these bylaws shall hold their offices for such terms and shall exercise such powers and perform such duties as may be determined from time to time by the appointing officer. Each officer shall hold office until his or her successor shall have been elected or appointed and qualified, or until such officer's earlier death, resignation or removal. [DGCL § 142(b)]

Section 4.03. Removal and Resignation of Officers; Vacancies.

(a) Any Principal Officer, honorary president, honorary vice president or Chair, however appointed or elected, may be removed at any time, either for or without cause, upon the affirmative vote of not less than a majority of the Members present in person or by proxy at a meeting of Members, and such removal shall take effect immediately upon such vote. Except as otherwise provided by Section 4.02(d) of these bylaws, any vacancy occurring in any office of the Corporation by any such removal may be filled at such meeting or in accordance with Section 4.03(b) of these bylaws.

(b) Any officer of the Corporation other than a Principal Officer may be removed at any time for or without cause by the Board. Any officer granted the power to appoint subordinate officers and agents as provided in Section 4.01 of these bylaws may remove any subordinate officer or agent appointed by such officer, for or without cause, at any time. Any officer, honorary president, honorary vice president or chair may resign at any time by delivering notice of resignation, either in writing signed by such officer or by electronic transmission, to the Board, the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. Except as otherwise provided by Section 4.02(d) or Section 4.03(a) of these bylaws, any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise, shall be filled by the Board, the President or the officer, if any, who appointed the person formerly holding such office. Any vacancy occurring in the position of Chair by death, resignation, removal or otherwise may be filled by the Board or the President. [DGCL § 142(b), (e)]

Section 4.04. Compensation of Officers. None of the officers of the Corporation shall be compensated for their services as such but the Board or a committee of the Board may determine the expenses in the performance of such services for which such an individual is entitled to reimbursement by the affirmative vote of a majority of the disinterested Directors then members of the Board or of such committee.

Section 4.05. Authority and Duties of Officers; Conflicts of Interest. The officers of the Corporation shall have such authority and shall exercise such powers and perform such duties as may be specified in these bylaws, and in any event each officer shall exercise such powers and perform such duties as may be required by law. Any contract or transaction in which an officer has an interest must be approved by a majority of disinterested Directors then members of the Board or by a committee made up of at least three disinterested Directors after disclosure to the Board of all material facts as to the officer's relationship to or interest in the contract or transaction and as to the nature of the contract or transaction. [DGCL § 142(a)]

Section 4.06. President. The President shall be the chief executive officer of the Corporation, have general control and supervision of the affairs and operations of the Corporation, keep the Board fully informed about the activities of the Corporation and see that all orders and resolutions of the Board are carried into effect. He or she shall manage and administer the Corporation's business and affairs and shall also perform all duties and exercise all powers usually pertaining to the office of a chief executive officer of a corporation. Subject to Section 9.02 of these bylaws, he or she shall have the authority to sign, in the name and on behalf of the Corporation, checks, orders, contracts, leases, notes, drafts and all other documents and instruments in connection with the business of the Corporation, except in cases in which the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent. If there is not a Chair, or in the Chair's absence or disability, the President shall preside at all meetings of the Members and of the Board. He or she shall appoint all members and chairs of sections of the Corporation, unless specifically provided otherwise by the certificate of incorporation, these bylaws or the Board. Except as otherwise provided in the certificate of incorporation or these bylaws, the President shall be an *ex officio* member of all appointed committees of the Board. The President shall have such other duties and powers as the Board may from time to time prescribe.

Section 4.07. President-Elect. The President-Elect shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the Board or the President. In the absence of the President, the President-Elect shall perform the duties and exercise the powers of (and be subject to all the restrictions upon) the President. Except as otherwise provided in the certificate of incorporation or these bylaws, the President-Elect shall be an *ex officio* member of all appointed committees of the Board. If there is no President-Elect, the Vice President who has served as Vice President for the longest time continuously shall perform the duties and exercise the powers of the President-Elect, but shall not be considered the President-Elect for the purposes of Section 4.02 of these bylaws.

Section 4.08. Vice Presidents. Each Vice-President shall perform such duties and exercise such powers as may be assigned to him or her from time to time by the Board or the President.

Section 4.09. Secretary. The Secretary shall:

- (a) act as secretary of all meetings of the Board and shall keep a record of all meetings of the Board in books provided for that purpose;
- (b) cause all notices to be duly given in accordance with these bylaws and as required by law and prepare correspondence in relation to the business of the Corporation;
- (c) subject to Section 9.02 of these bylaws, be the custodian of the records and of the seal of the Corporation and shall cause such seal (or a facsimile thereof) to be affixed to all documents and instruments that the Board or any officer of the Corporation has determined should be executed under its seal, may sign together with any other authorized officer of the Corporation any such document or instrument, and when the seal is so affixed may attest the same;
- (d) subject to Section 9.02 of these bylaws, sign with the President, the President-Elect or any Vice President, all instruments requiring the signature or attestation of the Secretary;
- (e) following the Reorganization, prepare for publication every two years the *Proceedings of the Corporation*, which shall include reports of the Working Committees (as defined below);

(f) properly maintain and file all books, reports, statements and other documents and records of the Corporation required by law, the certificate of incorporation or these bylaws; and have all powers and perform all duties otherwise customarily incident to the office of secretary, subject to the control of the Board and, in addition, shall have such other powers and perform such other duties as may be specified in these bylaws or as may be assigned to him or her from time to time by the Board or the President.

Section 4.10. Treasurer. The Treasurer shall be the chief financial officer of the Corporation and shall:

(a) have charge and supervision over and be responsible for the moneys, securities, receipts and disbursements of the Corporation, and keep or cause to be kept full and accurate records of all receipts of the Corporation;

(b) cause the moneys and other valuable effects of the Corporation to be deposited in the name and to the credit of the Corporation in such banks or trust companies or with such bankers or other depositaries as shall be determined by the Board or the President, and by such other officers of the Corporation as may be authorized by the Board or the President to make such determination;

(c) subject to Section 9.02 of these bylaws, cause the moneys of the Corporation to be disbursed by checks or drafts (signed by such officer or officers or such agent or agents of the Corporation, and in such manner, as the Board or the President may determine from time to time) upon the authorized depositaries of the Corporation and cause to be taken and preserved proper vouchers for all moneys disbursed, provided, that no disbursement, the amount of which exceeds one thousand dollars, may be made without being certified as correct and approved by the President;

(d) render to the Board or the President, whenever requested, a statement of the financial condition of the Corporation and of all his or her transactions as Treasurer, and render a full financial report at the annual meeting of the Board, if called upon to do so;

(e) be empowered from time to time to require from all officers or agents of the Corporation reports or statements giving such information as he or she may desire with respect to any and all financial transactions of the Corporation; and

(f) have all powers and perform all duties otherwise customarily incident to the office of treasurer, subject to the control of the Board, and, in addition, shall have such other powers and perform such other duties as may be specified in these bylaws or as may be assigned to him or her from time to time by the Board or the President.

ARTICLE V

COMMITTEES OF THE CORPORATION

Section 5.01. Working Committees. The work of the Corporation in studying International Law, Public and Private, shall be carried out by committees of the Corporation (each, a "Working Committee") from time to time established by the President or the Board. Such Working Committees are encouraged to coordinate their activities with those of corresponding committees of the ILA, where such corresponding committees exist. In the absence of a corresponding committee of the ILA, a Working

Committee shall pursue such activities as may be suggested to it or approved from time to time by the President or the Board.

Section 5.02. Membership, Leadership and Duration. Each Working Committee shall consist of such Members as shall agree to serve on such Working Committee at the request of the President or the Board. In addition, each Working Committee shall have the discretion to add additional members as it sees fit. The Board may adopt other rules and regulations for the government of any Working Committee not inconsistent with the provisions of these bylaws, and each Working Committee may elect its own chairperson and adopt its own rules and regulations of government, to the extent not inconsistent with these bylaws or rules and regulations adopted by the Board. Each Working Committee shall continue for such period or periods as may be designated by the President or the Board.

ARTICLE VI

COMMITTEES OF THE BOARD OF DIRECTORS

Section 6.01. Designation of Committees. The Board shall have a Nominating Committee, and the Board may designate one or more other committees of the Board. Each committee shall consist of such number of Directors as from time to time may be fixed by the Board or, in the case of the Nominating Committee, by the President. Each committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation to the extent permitted by law and delegated to such committee by these bylaws or by resolution of the Board, provided that no committee shall have any power or authority in reference to the following matters:

- (a) amendments to the certificate of incorporation or these bylaws;
- (b) filling of vacancies in the Board or in any committee;
- (c) amending or repealing any resolution of the Board that by its terms may not be so amended or repealed;
- (d) delegating any of the power or authority of such committee to a subcommittee unless so authorized by the Board; and
- (e) any other matter that pursuant to the DGCL is excluded from the authority of a committee of the Board.

Section 6.02. Committee Members. Except as otherwise provided in the certificate of incorporation or these bylaws, the members of each committee of the Board shall be appointed by the Board and shall serve at the pleasure of the Board; provided, that the members of the Nominating Committee may be appointed by the President if such members are not appointed by the Board and, if so appointed by the President, shall serve at the joint pleasure of the President and the Board. Each member of any committee of the Board (whether designated at an annual meeting of the Board to fill a vacancy or otherwise) shall serve for a term expiring at the next annual meeting of the Board. Each member of any such committee shall hold office until his or her successor is appointed or until his or her earlier death, resignation, removal or ceasing to be a Director.

Section 6.03. Nominating Committee. Except as otherwise provided in the certificate of incorporation or these bylaws, the Nominating Committee shall propose nominations for such Principal Officers and Directors as may be directed by the Board or the President or, in the absence of such direction, as the Nominating Committee sees fit. Except as otherwise provided in the certificate of incorporation or

these bylaws, the Nominating Committee shall follow such rules and procedures as may be prescribed by resolution of the Board or, in the absence thereof, as the Nominating Committee may adopt.

Section 6.04. Committee Procedures. At any meeting of any committee of the Board, the presence of a majority of its members then in office shall constitute a quorum for the transaction of business, unless (a) such committee has only one or two members, in which case a quorum shall be one member, or (b) a greater quorum is established by the Board. The vote of a majority of the committee members present at a meeting at which a quorum is present shall be the act of the committee. Each committee of the Board shall keep regular minutes of its meetings and report to the Board when required. The Board may adopt other rules and regulations for the government of any committee of the Board not inconsistent with the provisions of these bylaws, and each committee of the Board may elect its own chairperson and may adopt its own rules and regulations of government, to the extent not inconsistent with these bylaws or rules and regulations adopted by the Board.

Section 6.05. Meetings and Actions of Committees. Meetings and actions of each committee of the Board shall be governed by, and held and taken in accordance with, the provisions of the following sections of these bylaws, with such bylaws being deemed to refer to the committee, its members and its chairperson (if any) in lieu of the Board, its members and the President or Secretary, respectively:

- (a) Section 3.04 (to the extent relating to place and time of meetings);
- (b) Section 3.05 (relating to notice and waiver of notice), except that a committee of the Board may, by resolution of a majority of the members of such committee, adopt lesser notice requirements than those specified in Section 3.05(a);
- (c) the third sentence of Section 3.06 (relating to participation of interested Directors);
- (d) Section 3.07 and Section 3.09 (relating to telephonic communication and action without a meeting), except that a committee of the Board may, by resolution of a majority of the members of such committee, adopt a lesser notice requirement than that specified in Section 3.07 for a request by a member of such committee to participate remotely in a meeting of such committee; and
- (e) Section 3.08 (relating to adjournment and notice of adjournment).

Special meetings of committees of the Board may also be called by resolution of the Board.

Section 6.06. Resignations and Removals of Committee Members. Any member of any committee of the Board may resign from such position at any time by delivering a written notice of resignation, either in writing signed by such member or by electronic transmission, to the Board or the President. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any member of any committee of the Board may be removed from such position at any time, either for or without cause, by resolution adopted by a majority of the total authorized number of Directors acting at a meeting of the Board or by written consent in accordance with the DGCL and these bylaws.

Section 6.07. Vacancies on Committees. If a vacancy occurs in any committee of the Board for any reason the remaining members may continue to act if a quorum is present. A committee vacancy may only be filled by a majority of the total authorized number of Directors.

ARTICLE VII

INDEMNIFICATION

Section 7.01. Indemnification.

(a) Subject to Section 7.01(c) of these bylaws, the Corporation shall indemnify, to the fullest extent permitted by the DGCL or applicable law, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (each, a “proceeding”) by reason of the fact that such person is or was serving or has agreed to serve as a Director or officer of the Corporation, or is or was serving or has agreed to serve at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, or by reason of any action alleged to have been taken or omitted by such person in such capacity, and who satisfies the applicable standard of conduct set forth in section 145 of the DGCL and any other applicable law:

(i) in a proceeding other than a proceeding by or in the right of the Corporation to procure a judgment in its favor, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person or on such person’s behalf in connection with such proceeding and any appeal therefrom, or

(ii) in a proceeding by or in the right of the Corporation to procure a judgment in its favor, against expenses (including attorneys’ fees but excluding judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person or on such person’s behalf in connection with the defense or settlement of such proceeding and any appeal therefrom (but if such person shall have been adjudged to be liable to the Corporation indemnification of expenses is permitted under this clause (ii) only upon a judicial determination in accordance with the requirements of section 145(b) of the DGCL as to such person’s entitlement to indemnification).

(b) To the extent that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any proceeding referred to in Section 7.01(a) of these bylaws or in defense of any claim, issue or matter therein, such person shall be indemnified by the Corporation against expenses (including attorneys’ fees) actually and reasonably incurred by such person in connection therewith. [DGCL § 145(c)]

(c) Notwithstanding anything to the contrary set forth in Section 7.01(a) of these bylaws, the Corporation shall not be required to indemnify a present or former Director or officer of the Corporation in respect of a proceeding (or part thereof) instituted by such person on his or her own behalf, unless such proceeding (or part thereof) has been authorized by the Board or the indemnification requested is pursuant to the last sentence of Section 7.03 of these bylaws.

(d) If the Corporation is a “private foundation” under the Internal Revenue Code of 1986 (as it may be amended, the “Code”), no indemnification shall be provided hereunder to the extent that such indemnification would result in a violation of section 4941 of the Code.

Section 7.02. Advance of Expenses. The Corporation shall advance all expenses (including reasonable attorneys’ fees) incurred by a present or former Director or officer in defending any proceeding prior to the final disposition of such proceeding upon written request of such person and delivery of an undertaking by such person to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation under this Article or applicable law. The Corporation may authorize any counsel for the Corporation to represent (subject to applicable conflict of interest

considerations) such present or former Director or officer in any proceeding, whether or not the Corporation is a party to such proceeding. [DGCL § 145(e)]

Section 7.03. Procedure for Indemnification. Any indemnification under Section 7.01 of these bylaws or any advance of expenses under Section 7.02 of these bylaws shall be made only against a written request therefor (together with supporting documentation) submitted by or on behalf of the person seeking indemnification or an advance of expenses. Indemnification may be sought by a person under Section 7.01 of these bylaws in respect of a proceeding only to the extent that both the liabilities for which indemnification is sought and all portions of the proceeding relevant to the determination of whether the person has satisfied any appropriate standard of conduct have become final. A person seeking indemnification may seek to enforce such person's rights to indemnification (as the case may be) in the Delaware Court of Chancery to the extent all or any portion of a requested indemnification has not been granted within 90 days of the submission of such request. All expenses (including reasonable attorneys' fees) incurred by such person in connection with successfully establishing such person's right to indemnification under this Article, in whole or in part, shall also be indemnified by the Corporation to the fullest extent permitted by law.

Section 7.04. Burden of Proof. In any proceeding brought to enforce the right of a person to receive indemnification to which such person is entitled under Section 7.01 of these bylaws, the Corporation has the burden of demonstrating that the standard of conduct applicable under the DGCL or other applicable law was not met. A prior determination by the Corporation (including its Board or any committee thereof, or its independent legal counsel) that the claimant has not met such applicable standard of conduct does not itself constitute evidence that the claimant has not met the applicable standard of conduct.

Section 7.05. Contract Right; Non-Exclusivity; Survival.

(a) The rights to indemnification provided by this Article VII shall be deemed to be separate contract rights between the Corporation and each Director and officer who serves in any such capacity at any time while these provisions as well as the relevant provisions of the DGCL are in effect, and no repeal or modification of any of these provisions or any relevant provisions of the DGCL shall adversely affect any right or obligation of such Director or officer existing at the time of such repeal or modification with respect to any state of facts then or previously existing or any proceeding previously or thereafter brought or threatened based in whole or in part upon any such state of facts. Such "contract rights" may not be modified retroactively as to any present or former Director or officer without the consent of such Director or officer.

(b) The rights to indemnification and advancement of expenses provided by this Article VII shall not be deemed exclusive of any other indemnification or advancement of expenses to which a present or former Director or officer of the Corporation may be entitled as to action in such person's official capacity or as to action in another capacity while holding such office. [DGCL § 145(f)]

(c) The rights to indemnification and advancement of expenses provided by this Article VII to any present or former Director or officer of the Corporation shall inure to the benefit of the heirs, executors and administrators of such person. [DGCL § 145(f), (j)]

Section 7.06. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was or has agreed to become a Director or officer of the Corporation, or is or was serving at the request of the Corporation as a Director or officer of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person or on such person's behalf in any such capacity, or arising out of such person's status as such,

whether or not the Corporation would have the power to indemnify such person against such liability under the provisions of this Article VII. [DGCL § 145(g)]

Section 7.07. Employees and Agents. The Board may cause the Corporation to indemnify any present or former employee or agent of the Corporation in such manner and for such liabilities as the Board may determine, up to the fullest extent permitted by the DGCL and other applicable law.

Section 7.08. Interpretation; Severability. Terms defined in sections 145(h) or (i) of the DGCL have the meanings set forth in such sections when used in this Article VII. If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Director or officer of the Corporation as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, including an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article that shall not have been invalidated and to the fullest extent permitted by applicable law.

ARTICLE VIII

OFFICES

Section 8.01. Registered Office. The registered office of the Corporation in the State of Delaware shall be located at the location provided in Article II of the certificate of incorporation. [DGCL § 131]

Section 8.02. Other Offices. The Corporation may maintain offices at such other locations within or without the State of Delaware as the Board may from time to time determine.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Conduct of Business. The Corporation shall at all times conduct its business and affairs so as to qualify and remain qualified as exempt from federal income tax under section 501(c)(3) of the Code.

Section 9.02. Execution of Instruments; Contracts.

(a) Except as otherwise required by law or the certificate of incorporation, the Board or any officer of the Corporation authorized by the Board may authorize any other officer or agent of the Corporation to enter into any contract or to execute and deliver any instrument in the name and on behalf of the Corporation. Any such authorization must be in writing or by electronic transmission and may be general or limited to specific contracts or instruments. Contracts may not be entered into on behalf of the Corporation unless and except as authorized by the Board pursuant to this Section 9.02(a).

(b) Loans or advances shall not be contracted on behalf of the Corporation, and notes or other evidences of indebtedness shall not be issued in the name of the Corporation, unless and except as authorized by the Board pursuant to this Section 9.02(b). Any such authorization must be in writing or by electronic transmission, may be general or limited to specific instances and may include authorization to pledge, as security for the repayment of any and all loans or advances authorized, any and all securities and other personal property any time held by the Corporation.

Section 9.03. Surety Bonds. The Board may require a Director, officer, agent or employee of the Corporation who is authorized to sign checks, or to cash checks drawn to the order of the Corporation, or to handle or disburse funds of the Corporation, to give bond to the Corporation, with sufficient surety and in an amount satisfactory to the Board, for the faithful performance of his or her duties, including responsibility for negligence and for the accounting for all property, funds or securities of the Corporation which may come into his or her hands.

Section 9.04. Voting as Stockholder. Unless otherwise determined by resolution of the Board, any officer of the Corporation shall have full power and authority on behalf of the Corporation to attend any meeting of stockholders of any corporation in which the Corporation may hold stock, and to act, vote (or execute proxies to vote) and exercise in person or by proxy all other rights, powers and privileges incident to the ownership of such stock at any such meeting, or through action without a meeting. The Board may by resolution from time to time confer such power and authority (in general or confined to specific instances) upon any other person or persons.

Section 9.05. Fiscal Year. The fiscal year of the Corporation shall commence on the first day of January of each year and shall terminate in each case on December 31.

Section 9.06. Seal. The seal of the Corporation shall be circular in form and shall contain the name of the Corporation, the phrase “organized 1922 incorporated 2012,” and the words “Corporate Seal” and “Delaware”. The form of such seal shall be subject to alteration by the Board. The seal may be used by causing it or a facsimile thereof to be impressed, affixed or reproduced, or may be used in any other lawful manner.

Section 9.07. Books and Records; Inspection. Except to the extent otherwise required by law, the books and records of the Corporation shall be kept at such place or places within or without the State of Delaware as may be determined from time to time by the Board.

Section 9.08. Electronic Transmission. “Electronic transmission”, as used in these bylaws, means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process. [DGCL § 232(c)]

ARTICLE X

AMENDMENT OF CERTIFICATE OF INCORPORATION AND BYLAWS; CONSTRUCTION

Section 10.01. Amendments. These bylaws may be amended, altered or repealed by resolution adopted by the affirmative vote of the Board. Any such amendment by the Board shall be reported to the Members at the next following meeting of Members. No amendment, alteration, change or repeal of these bylaws shall be effected which will result in the denial of tax-exempt status to the Corporation under section 501(c)(3) of the Code. [DGCL 242(b)(3); 109(a)]

Section 10.02. Construction. In the event of any conflict between the provisions of these bylaws as in effect from time to time and the provisions of the certificate of incorporation as in effect from time to time, the provisions of the certificate of incorporation shall be controlling.

PART V – IN MEMORIAM

John Washburn (1937-2022)

It is with great sadness that the ABILA International Criminal Court Committee announces the passing of John L Washburn on July 13, 2022.

John Washburn was a luminary in the field of international law, particularly dedicated to the International Criminal Court and advancing Americans' understanding of the Court as well as the official U.S. position on the Court.

John was a career Foreign Service officer, who had postings in India, Iran, and Indonesia as well as the U.S. State Department. John served on the Iran Hostage Task Force in 1979, and from 1985-87, was a member of the State Department's Policy Planning Staff. From 1988-93, he was Director in the Executive Office of the UN Secretary-General, serving under Javier Pérez de Cuéllar and Boutros Boutros-Ghali.

He served as a founding member of the Coalition for the International Criminal Court (CICC), and participated in the 1998 Rome Conference, chairing negotiations on gender crimes. He later founded the American Coalition for the ICC (AMICC) and the Washington Working Group on the ICC (WICC), which he co-chaired.

Among other publications, he co-authored the book "Negotiating the International Criminal Court: New York to Rome, 1994-1998," with co-authors Fanny Benedetti and Karine Bonneau.

He was a member of the Crimes Against Humanity Initiative Advisory Council, a project of the Whitney R. Harris World Law Institute at Washington University School of Law in St. Louis to establish the world's first treaty on the prevention and punishment of crimes against humanity.

John was a gracious, warm-hearted person, always giving of his time and eager to mentor the next generation. He leaves a rich legacy of academics and civil society representatives throughout America inspired by him to continue his work.

Jennifer Trahan & Megan A. Fairlie
ABILA ICC Committee, co-chairs
Leila Nadya Sadat
President of ABILA and past chair, ICC Committee

Megan Fairlie (1974-2022)

The International scholarly community lost a shining star with the recent, untimely passing of Professor Megan Fairlie, who, among many other accomplishments, served as co-chair of the International Criminal Court Committee of the American Branch of the International Law Association.

Megan was a Professor of Law at Florida International University College of Law where she specialized in Criminal Law, Criminal Procedure & Litigation, International Human Rights, International Law, and Professional Responsibility.

She was a prolific scholar, having authored scores of law review articles and book chapters. Her main research was in the area of international criminal procedure, particularly questions arising in proceedings before the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court (“ICC”).

Megan received her PhD in International Human Rights Law from the National University of Ireland (Galway), where she studied with Professor William A. Schabas, who later became a treasured friend. In recent years, Megan returned to teach at the Irish Center for Human Rights in their renowned summer program. Megan’s LL.M. was from the same University, with her J.D. from Washington and Lee University. She received her B.A. (summa cum laude) from the State University of New York at Albany where she was inducted into Phi Beta Kappa.

Having commenced her law career as an Assistant District Attorney in North Carolina, she later served as Counsel in both houses of the New York State Legislature in Albany, New York. She also served as a Visiting Professor at Albany Law School, and a Lecturer in Law at the University of Ulster, Belfast, where she was part of the Transitional Justice Institute.

Megan cared deeply about the ICC and the US relationship with the Court. She authored or co-authored numerous posts on the ICC, including on *Opinio Juris*. Megan wrote with precision and eloquence and a deep-seated commitment to the rule of law and accountability, as well as a steadfast opposition to exceptionalism.

Beyond her scholarship and technical expertise, Megan will be remembered for her zest for life, her dry and clever wit, and being a devoted mother to her two young daughters. She was extraordinarily principled in her views, and a joyful person who enriched the lives of those who were fortunate enough to spend time with her. Even in illness, she retained a remarkable sense of humor and optimism.

Megan succumbed, after a long battle with cancer, on December 27, 2022. This post is written to celebrate the accomplishments of a remarkable person and trusted colleague who will be dearly missed.

Jennifer Trahan
Remaining Chair of the ABILA ICC Committee
Vice President and Co-Director of Studies of the ABILA

Ved Prakash Nanda (1934-2024)

The American Branch is sad to announce the passing of professor Ved Prakash Nanda, widely acclaimed international law scholar, fierce protector of human rights, and vital member of the American Branch. Professor Nanda passed away on Monday, January 1, 2024.

Professor Nanda was involved with the American Branch for decades, including roles as a member of the Executive Committee, the Vice-President, David Dudley Field Patron, a recipient of the 2023 Charles Siegal Distinguished Service Award, and as an Honorary Vice President until his passing. He was also the co-editor of the International Practitioner's Notebook, an American Branch publication previously published quarterly.

Professor Nanda earned his B.A. and M.A. from Punjab University, India, his LL.B and LL.M from Delhi University, India, an LL.M from Northwestern University, Chicago, and has been awarded two honorary doctorates from Soka University, Japan, and Bundelkhand University, India. Professor Nanda has taught international law at over a dozen schools globally, including the University of Oxford, California Western School of Law, the National Autonomous University of Mexico, and Trinity College, Dublin. His professorial home was Strum College of Law, University of Denver, where he founded the International Legal Studies Program in 1972 and was the Director of the eponymous Ved Nanda Center for International and Comparative Law. His final title at the University of Denver was as a Distinguished University Professor and Thompson G. Marsh Professor of Law, where he received several faculty awards, acted as a Faculty Adviser to the Denver University Law Review and the Denver Law Forum, and since 1991, regularly wrote an international affairs column for The Denver Post.

Professor Nanda authored or co-authored 24 books and over 225 chapters and law review articles in international and comparative law, and received more than 50 awards over his career. Some of his many publications include *International Environmental Law & Policy for the 21st Century* (Brill Publishers, 2012 with George W. Pring) and *Law in the War on International Terrorism* (2005, Transnational Publishers). In 2018, he received the Padma Bhushan award, the third-highest civilian award in the Republic of India, for his work in the field of literature and education. He previously served as the President of the World Jurist Association, Director of the American Society of Comparative Law, and President of the World Association of Law Professors, and held a variety of advisory roles. With several awards established thanks to the work of Professor Nanda, his remarkable legacy will live on.

From our President, **Michael P. Scharf**: *“Over thirty years, I spent many wonderful times with Ved and his wife Katherine, in Denver, Cleveland, DC, New York, and abroad. Ved was a warm, humorous, and supportive friend and colleague as well as a mentor and an inspiration to a generation of international law professors and practitioners, including Brenda Hollis who went on to be the Chief Prosecutor of the Special Court for Sierra Leone and the International Prosecutor of the Cambodia genocide tribunal. Ved was an acclaimed scholar, human rights advocate, and institutional builder — culminating in the establishment of the International Law Center at Denver University that bears his name. The ABILA was one of his favorite organizations, and we were happy that his lifetime contributions and leadership were honored last fall when Ved received the ABILA's Charles Siegal Service Award.”*

From our Chair, **Leila Nadya Sadat**: *“Ved was one of the most thoughtful and brilliant international law scholars of his generation. At the same time, he was also kind and humble. I first met him during the Rome Diplomatic Conference, attending as a very junior scholar, and we immediately became fast friends. He was a stalwart member of*

the American Branch, never missing a meeting, and always contributing to our activities. His passing is a great loss personally, to the Branch, and to the entire international community. He will be greatly missed.”

From our Honorary Vice-President, **James A. R. Nafziger**: *“I’ll miss him greatly, having first met him not long after I emerged into the profession after law school and a federal clerkship. He memorably took me under his wing, where I remained as a close friend and collaborator ever after. (I called him “Commander-in-Chief”—and what a gentle but effective one he was!—and he called me “General”). I hope all of us will remember him not only for his enormous, steadily flowing contributions to the development and advancement of international law, but also for his joie de vivre and kindness.”*

Cynthia C. Lichtenstein (1934-2024)

Cynthia Lichtenstein, Honorary Vice President and former President of ABILA, left us physically on November 28, 2024 at the age of 90. But she will never leave us intellectually or emotionally. A good life lives on, and hers was chock full, raising a family and rising to the top of overlapping careers in law practice, academia and professional leadership.

She was exceptionally well grounded. One of her endearing practices was to extend a warm and enduring welcome to newcomers in each of her professional environments including ABILA. After her passing, one of her protégés on the Boston College Law faculty, her principal academic affiliation, recalled her advice about getting to work there in Boston traffic: “Unless you keep moving, you’re toast.” What an apt metaphor to describe Cynthia herself – witness the ever-changing advice about her specific whereabouts on her voicemail! Still, she liked stable surroundings. When a B.C. colleague gently reminded her that the movers would be coming to her office the very next day to prepare for repainting and recarpeting, she replied, “I don’t think so.”

Years later, on her retirement, her office alone at the law school still had the original paint and carpet. After retiring from B.C., she was largely anchored in just two locations: Stonington, CT and Sarasota, FL, both near water and boats, which she loved. During her so-called post-retirement, while teaching for a few years at George Washington Law School, she also kept a boat in a Potomac marina, in which I was privileged to stay a few times during meetings in Washington when she and her husband Charles were away.

Cynthia’s leadership in the ILA over many years was immense, ranging from the humdrum of routine management matters to pathfinding developments of the law in MOCOMILA, her niche committee on monetary law and practice. The biennial ILA Proceedings repeatedly reflect her advocacy of harmonized national laws and concern about the increasing complexity of financial markets. As a Vice Chair of the ILA she was characteristically insightful, measured and practical on the podium during Executive Council meetings. Her mind was brilliant, but her voice low-keyed. Within ABILA her workaday attention to detail was peerless. No wonder she was enthusiastically elected as ABILA’s first female President (1986-92) and, more recently (2020), as the first recipient of our service award. She was a fixture at biennial ILA conferences and semiannual ABILA meetings twice a year.

It is remarkable that after Cynthia suffered a serious stroke late in life, she kept her eye on the ball, never giving up hope to resume attendance at ILA conferences and ABILA meetings but meanwhile content to settle for occasional visits and phone conversations such as with ABILA President-Elect Amity Boye and me. She wasn’t always easy to reach at her retirement center in Sarasota, but when that was possible, she always, first and foremost, began our conversations by lamenting the loss of her beloved husband Charles, immediately followed by questions about the latest ILA and ABILA developments as well as thoughtful advice: “*Here’s what we need to do, Jim...*” Her memory of ILA and ABILA history, not to mention often humorous personal vignettes, was remarkable. *Quelle femme!*

We mourn her loss now but will treasure our memories of her forever.

Jim Nafziger
Vice Chair, ILA
Honorary Vice President and former President, ABILA