

ILA NEWSLETTER

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FROM THE EDITOR - Professor J. Craig Barker, Sussex Law School

I am delighted to bring to you the latest edition of the ILA Newsletter. Much of this edition is focussed on the forthcoming, and much anticipated, 72nd ILA Biennial Conference which is to take place in Toronto from 4-8 June 2006. The organisers of this event have submitted an article which provides further details of what will undoubtedly be an event not to be missed.

I am pleased to be able to publish a report from Martin Glassner on the 15th Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea. Many readers will welcome, as I did, the update on the implementation of the convention, particularly the functioning of the International Tribunal for the Law of the Sea which Professor Glassner describes in detail.

A number of Branches have reported on successful activities during the past few months. As ever, it would be good to hear from other branches about their activities, particularly those who have not reported for a while. Finally, this issue contains details of forthcoming events arranged by the American and British branches. Other branches are encouraged to take the opportunity of this Newsletter to publicise conferences and other events entirely free of charge.

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A meeting of the Executive Council was held on Saturday 12 November in London

Tribute was paid to Mr Ian E McPherson QC, former Vice-President of the Canadian Branch.

The Treasurer presented his report and pointed out that income was likely to be in line with budget but that expenditure will exceed income this year. The main cause of this was the cost of distribution of the Berlin Conference report which due to the weight of the report and to an increase in postage rates had been higher than budgeted. It was agreed that the Toronto Conference report may be shipped to the various branches for postage locally.

It was agreed that several branches which had not contributed to HQ for several years should no longer be considered as active branches and that anyone listed as a member of these branches should be invited to join Headquarters until such time as the branch is re-activated. The branches concerned are: Malta, Pakistan and Nepal.

As agreed at the Executive Council meeting in November 2004, the HQ contribution from branches will be increased at the Toronto conference with effect from January 2007. The rates will be: Individual to £30; Student to £15 and Corporate to £150.

The Director of Studies, Professor Christine Chinkin presented her report to the Council. In addition to changes to some committee officers (see under International Committees), Professor Chinkin proposed a new committee on Non-State Actors. The proposal was approved and Professor Math Noortmann (Netherlands) was appointed Chair.

The Director of Studies reported that most committees have indicated their plans for Toronto. Currently 18 have confirmed that they will report and four will submit final resolutions. They have each been asked to supply a brief outline of the reports they will submit to the organising committee which will be used to promote the conference.

Milos Barutciski, President of the Canadian Branch reported on the planning progress with the Toronto Conference in 2006. A full programme will be finalised in December for circulation in January. Registration fees will be announced at that time, but with the funding already in place and more hoped for, the organisers are confident that the fee to be charged to ILA members will be acceptable. There will be a range of fees allowing lower rates for students and other categories.

The dates and location for the 2008 Conference in Brazil will be announced by the time of the Toronto Conference.

The 2010 conference will be held in The Hague; the 2012 in Sophia.

The next Executive Council meeting will be held in Toronto on Sunday 4 June 2006 at 14.00.

The following one will be in London on 11 November 2006 at 10.00am.

COMMITTEE NEWS

International Committees

Professor Mary-Ellen O'Connell (US) was approved as chair of the Use of Force committee and Dr Judith Gardam (Australian) was appointed rapporteur. This committee will hold its first meeting during the Toronto conference.

Dr Maria Gavouneli (Hellenic) had agreed to act as co-rapporteur on the Transnational Enforcement of Environmental Law committee.

Study Groups

Professor A H A Soons was appointed to the study group on International Courts and Tribunals.

The following were approved as members of the study group on Responsibility of International Organisations: Galileo Verdirame, Rapporteur (British); Dapo Akande (British); Dan Bradlow (American); Jeremy Carver (British); Annalisa Ciampi (Italian); Larry Johnson (American); Pierre Klein (HQ); Edward Kwakwa (HQ); Loretta Malintoppi (French & Italian); Frans Nelissen (Netherlands); Arnold Pronto

(American); August Reinisch (Austrian); Dan Sarooshi (British); Maureen Williams (HQ).

Professor Nico Schrijver (Netherlands) and Dr Kamal Hossain (Bangladesh) had agreed to co-chair the study group on UN Reform. Dr Ralph Wilde (British) had agreed to be rapporteur. An open meeting of the study group is to be planned for Toronto.

New Committees/Study Groups

A new committee on Non-State Actors was approved and Professor Math Noortmann (Netherlands) was appointed Chair.

When the 72nd Biennial Conference of the ILA opens in Toronto on the evening of Sunday, June 4, delegates will begin to experience the most ambitious ILA Conference ever. And they will see first-hand why the theme for the Toronto Conference is “The World is Here”.

Lors de l’ouverture du 72^e Conférence Biennale de l’ADI à Toronto le soir du dimanche le 4 juin, les délégués commenceront à participer à la Conférence la plus ambitieuse de l’histoire de l’ADI. Ils comprendront bien la raison pour laquelle le thème de la Conférence de Toronto est « Le Monde est ici ».

The ILA has not held a Biennial Conference in North America in almost a quarter of a century. On its long awaited return, when the Conference arrives in Toronto, it will be greeted by a vibrant, exciting and friendly city, and one of the most culturally diverse cities in the world. Hence the theme “The World is Here”.

L’ADI n’a pas tenu une conférence biennale en Amérique du Nord depuis près d’un quart de siècle. À son retour, attendu depuis longtemps, l’ADI sera accueillie par une ville chaleureuse, vivante, et excitante, une des plus multiculturelles au monde. C’est également dans cet autre sens que « Le Monde est ici ».

Not only will ILA members from some 50 ILA countries find themselves among other leading members of the legal community from around the world, but they

will receive a warm and enthusiastic welcome from the people from around the world who have made Toronto their home. Delegates and their guests will enjoy a wide range of entertainment and sports events, all types of music and terrific restaurants. A highlight will be the Conference Excursion to Niagara Falls, one of the Seven Wonders of the World, with a visit to historic Niagara-on-the Lake, Barbeque Lunch and Winery Tour.

*“The World is Here” –
The Toronto Conference,
June 4 – 8, 2006*

*« Le Monde est ici » –
Conférence à Toronto,
du 4 au 8 Juin, 2006*

The Conference Programme will include Working Sessions of the ILA Committees and Study Groups at which some of the most important current issues in more than twenty areas of private and public international law will be considered, and at which the reports and recommendations of the Committees and Study Groups will be discussed and adopted. To complement the Working Sessions, there will be an exciting series of lectures and panel presentations by leading international academics, judges and practitioners on a wide range of subjects of topical concern. Many prominent international law organizations and leading law firms are joining with

the ILA to develop and present the complementary programme, which will highlight key issues in areas related to the work of the Committees.

The meetings of the committees and study groups and the complementary programmes will be grouped into six major “tracks”:

International Dispute Resolution Track

- * International Commercial Arbitration Committee
- * “The Changing Face of International Commercial Arbitration”
- * “Globalization of Class Actions”
- * “Emerging Trends in the Enforcement of Arbitral Awards”
- * “Foreign Judgments: Finding the Way Forward”
- * Practice and Procedure of International Tribunals Study Group

International Business Law Track

- * “Convergence in Global Competition Law”
- * International Trade Law Committee
- * International Law on Foreign Investment Committee
- * “Current Developments and Challenges in Trade and Investment Law”
- * International Monetary Law Committee
- * “Crossborder Securities Law: International Regulatory Policy-Making”
- * International Securities Regulation Committee

International Institutions Track

- * "An Institution in Crisis? The Future of the United Nations and Prospects for Reform"
- * Diplomatic Protection of Persons and Property Committee
- * Aspects of the Law of State Succession Committee
- * Use of Force Committee
- * International Criminal Court Committee
- * "The Future of the International Criminal Court"
- * Responsibility of International Organizations Study Group

International Rule of Law and Human Rights Track

- * Islamic Law and International Law Committee
- * "The Rule (and Roles) of Law in the International Community"
- * Feminism and International Law Committee
- * International Human Rights Law and Practice

International Environment and Development Track

- * Outer Continental Shelf Committee
- * "Integration in Action: Sustainable Development Law"
- * International Law on Sustainable Development Committee
- * Transnational Enforcement of Environmental Law Committee
- * Space Law Committee

International Intellectual Property and Cultural Heritage Track

- * Cultural Heritage Law Committee
- * "Global Issues in Intellectual

Property Law"

- * International Law on Biotechnology Committee
- * "Rights of Indigenous Peoples"
- * Plenary Session: Rights of Indigenous Peoples

ILA 2006 is aiming to attract many lawyers, judges and academics from beyond the ranks of ILA members, particularly in Canada and the U.S. North-East, and from the ranks of the Supporting Organizations.

The Supporting Organizations to date include American Law Institute; Canadian Council on International Law; American Society of International Law; The Advocates' Society, Canadian Bar Association (International Law Section); Centre for International Sustainable Development Law; Indigenous Bar Association; International Commission of Jurists (Canadian Branch); Law Society of Upper Canada; Canadian Red Cross Advisory Committee on International Humanitarian Law; and New York State Bar Association (International Law and Practice Section).

One highlight of the Toronto Conference will be a programme on indigenous peoples' rights featuring leading Canadian and international aboriginal speakers. The programme will launch the new Rights of Indigenous Peoples Committee of the ILA.

The Toronto Conference will include a Young Lawyers Programme, aimed at future leaders in all areas of the legal profession. This innovative pro-

gramme is being developed with the involvement of "under 40" groups in other Canadian legal organizations. Also certain of the Complementary Programmes will place a special emphasis on diversity and younger practitioners, including, "The Changing Face of International Commercial Arbitration" which will focus on the challenges posed by the new diversity in the international commercial arbitration community including the involvement of more women, persons of colour, younger arbitrators and persons from all parts of the world.

A variety of social activities has been arranged for delegates and their guests, including:

- * Reception hosted by the Lieutenant Governor of Ontario
- * Reception co-hosted by the Law Society of Upper Canada and Court of Appeal for Ontario

The Preliminary Programme for ILA 2006 will be mailed early in 2006. ILA members are encouraged to visit the Conference Website www.ila2006.org and to complete the pre-registration form to ensure that they are on the mailing list.

Le programme préliminaire de l'ADI 2006 sera posté au début de 2006. Les membres de l'ADI sont encouragés à visiter le site Internet de la Conférence www.ila2006.org, et de compléter le formulaire de pré-inscription pour s'assurer qu'ils soient inclus sur la liste de diffusion.

Martin Glassner writes:

In June I attended, at United Nations Headquarters, part of the 15th Meeting of States Parties to the 1982 United Nations Convention on the Law of the Sea (16-23 June 2005). Some members of the ILA might be interested in the outcome of this meeting.

There are now 148 parties to the Convention, all of which were represented at this meeting, including the European Community (not the EU) which could speak but not vote. A number of budgetary matters regarding the International Tribunal for the Law of the Sea (ITLOS, or the Tribunal) were discussed and the Meeting received information delivered by the Secretary-General of the International Seabed Authority and the Chairman of the Commission on the Limits of the Continental Shelf. The greatest interest, however, was generated by the ITLOS, including election of seven judges, and the long-standing question of Article 319 of the Convention.

The President of the Tribunal, Dolliver Nelson, presented its annual report. Its most striking feature was its documentation of the relatively little use being made of the ITLOS. Only 35 States Parties have filed relevant declarations under Article 287 of the Convention concerning choice of procedures for settlement of disputes involving the interpretation or application of the Convention, and only 21 States Parties have chosen the ITLOS as the means or one of the means for the settlement of such disputes.

Only one case was concluded in the past year, the “Juno Trader” (St. Vincent and the Grenadines vs Guinea Bissau), the thirteenth case decided by the Tribunal. Most, like this one, have involved the prompt release of vessels and crews (Article 292 of the 1982 Convention). One exception is the only

case still on the docket, “Case Concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean” (Chile/EU).

The Tribunal and its procedures were designed to provide quick and relatively inexpensive resolution of many types of disputes arising from the Law of the Sea and for some years now there has been concern about the small number of cases referred to it. One theory is that States generally prefer to settle Law of the Sea cases by arbitration even though this procedure is generally prolonged and expensive. The ITLOS has been useful for other purposes, such as an internship program and a symposium on maritime delimitation, but both its judges and outside observers are perplexed about how it can be made more effective in its primary purpose, the settlement of disputes.

The highlight of the Meeting was the election of seven judges to fill vacancies on the Tribunal that occurred on 1 October 2005. In the first round of voting, President L. Dolliver M. Nelson of Grenada and Choon-ho Park of the Republic of Korea were reelected to new nine-year terms, while Shunji Yanai of Japan and Helmut Türk of Austria were elected for the first time. No surprises here, but the source of much surprise and consternation was the large number of invalid ballots - 27. There was considerable informal discussion about it, out of which came some quite fanciful conspiracy theories. The most likely explanation, however, was that the UN requirement of “equitable geographical distribution” of seats was not adequately explained before the balloting and perhaps two dozen delegations voted for too many or too few candidates from particular geographical areas. This explanation did not satisfy everyone, but the balloting resumed after the custom-cum-rule was explained by the President of the Meeting. Balloting would continue

until two Africans and one Eastern/Central European received the requisite number of votes. There were no more invalid ballots. James L. Kateka of Tanzania and Albertus Jacobus Hoffman of South Africa were elected in the fourth round and Stanislaw Pawlak of Poland in round five. It is interesting to note that three sitting judges of the Tribunal - Mohamed Marsit of Tunisia and David Anderson of the United Kingdom, and Vice-President Budislav Vukas of Croatia were not re-elected.

A significant debate has been conducted over a number of years focussing on the interpretation and application of Article 319 of the United Nations Convention on the Law of the Sea, in particular paragraph (2)(a) thereof: “In addition to his functions as depositary, the Secretary-General shall: (a) report to all States Parties, the [International Seabed] Authority and competent international organizations on issues of a general nature that have arisen with respect to this Convention.”

Two schools of thought have developed. One holds that the Meeting of States Parties should consider only budgetary and administrative matters, including election of judges, whereas the other asserts that Article 319(2)(a) constitutes the legal basis for consideration of a variety of other issues as well. A compromise was reached by retaining the agenda item for the next Meeting of States Parties: “Report of the Secretary-General [of the United Nations] under article 319 for the information of States Parties on issues of a general nature, relevant to States Parties that have arisen with respect to the United Nations Convention on the Law of the Sea.” It remains to be seen how - if at all - this report will relate to the long-standing annual Report of the Secretary-General [to the General Assembly] on Oceans and the Law of the Sea.

ARGENTINE BRANCH

At our academic session on August 10th, 2005, conducted within the framework of the agreement entered into with the University "Universidad del Museo Social Argentino", Admiral Jorge A. FRAGA lectured on "Argentine Maritime Conflicts". His wide and erudite presentation covered an important series of current issues between our country, its neighbours and England, regarding Rio de la Plata, Yacuyetá, the continental shelf and the South Atlantic, among others. The fact that Admiral Fraga took an active part, as a member of the Argentine Navy, in the analysis and search for solutions for these controversies, added to his lecture a real protagonic value in this area of international history. The large audience took an active part in the presentation through questions and commentaries, which were clearly answered by the qualified speaker.

During September and October, Professors Mariano GAGLIARDO and Federico POLAK lectured on "Responsibility of Directors in Corporations" and "Foreign Corporations", respectively.

British Branch

The Annual General Meeting of the British Branch was held in London on 12 October 2005. Dr Ralph Wilde, Joint Honorary Secretary reported on a highly successful year of seminars aimed both at academics and practitioners. Planned seminars during Spring include the following:

February 22 'The use of force in the Congo'

Lecture: Dr Phoebe Okowa, QMUL

March 15 'Abuse of right and limits on the role of the ICJ'

Lecture: Dr Christine Gray, Cambridge University

The Annual Spring Conference of the ILA British Branch will be hosted by UCL and SOAS in Central London, March 3 – 4, 2006. The theme of the Conference is Tower of Babel: International Law in the 21st Century – coherent or compartmentalised? The keynote speaker will be H.E. Judge Rosalyn Higgins, International Court of Justice. Further details of the Conference are contained in the Conferences Section of this Newsletter.

German Branch

The German Branch held its, as usual well attended, Annual Meeting on June 17, 2005 at the Max-Planck-Institute of Comparative Public and Public International Law in Heidelberg; the Branch is very grateful to the Institut's Directors who have agreed to host the meeting for many years. Among other administrative business, members heard the final report on the 2004 Berlin Conference and thanked the principal organizers, Professors Boeckstiegel and Stein for what obviously had been, for the overwhelming majority of the participants, a very successful and pleasant conference.

During the scientific part of the meeting, Members heard presentation by the Branch Vice President,

Hilmar Raeschke-Kessler, Barrister at the German Supreme Court, on "Corruption in Relation to Foreign Investment", and by Professor Dr. Burkhard Hess, University of Heidelberg, on "The Transatlantic Jurisdiction Conflict". Both presentations touched the boarder-line between public and private international law and stirred very lively discussions.

Among the committees of the German Branch one, which has as yet no counterpart on the international level but is very active, deserves special mention: The Committee on "Parliaments and International Law". Founded in 2001, it has organized to major symposiums, one in 2002 in Leipzig on "Actual Problems of Parliamentary Legitimation of Foreign Powers" and another one in Tutzing in 2005, including political science experts, on "Between Legitimacy and Efficacy – The Role of Parliaments in Foreign Relations". Speakers during the last mentioned included Professors Bausback, Bothe, Geiger, Oberreuter and Tebbe. An additional presentation was given by Prof. Meyer, former member of the Convention that drafted the "European Constitution", on the much deplored "democratic deficit" of the European Union. The papers of the first symposium have already been, the papers of the second will be published soon by Prof. Geiger. On the day of the Annual Meeting and prior to the plenary, the Committee gathered to hear a presentation on "Projects, Experiences and Expectations Regarding the Cooperation of National and Regional Parliaments in the Baltic Area" by the Chief, Scientific

Services of the State Parliament of Mecklenburg-Vorpommern, Bodo Bahr.

Indian Branch

On 22nd April, 2005, a Conference was held at Nainital, the Uttaranchal center of ILA Regional Branch, India). During the event the Nainital Centre of the ILA (Regional Branch, India) was inaugurated by Hon'ble Mr. Justice Y.K. Sabharwal, Judge, Supreme Court of India. The function was attended by Hon'ble Mr. Justice Vijender Jain, Judge, Delhi High Court and Hony. Secretary and Mr. P.H. Parekh, President, Supreme Court Bar Association, India and Hony. Organizing Secretary. From Nainital it was attended by Hon'ble Mr. Justice Cyriac Joseph, Chief Justice of Uttaranchal, Hon'ble Mr. Justice Rajesh Tandon, Judge High Court of Uttaranchal, Mr. M.S. Negi, Advocate General, Uttaranchal, Mr. Dharm Veer, Chairman, Bar Council of Uttaranchal, Dr. M.S. Pal, President, High Court Bar Association, Mr. Alok Singh, Senior Advocate.

On 6th August, 2005, the ILA (Regional Branch, India) held its Annual seminar. The Seminar was inaugurated by Hon'ble Mr. Justice R.C. Lahoti, the Chief Justice of India and President of the Indian Branch. The other speakers at the inaugural session were Hon'ble Mr. Justice Y.K. Sabharwal, Judge, Supreme Court of India, Mr. Milon Kumar Banerji, Attorney General for India and Vice-President of Indian Branch, Hon'ble Mr. Justice Vijender Jain, Judge, Delhi High Court and Hony. Secretary and Mr. P.H. Parekh,

President, Supreme Court Bar Association and Hony. Organizing Secretary of Indian Branch.

The two topics deliberated at the Seminar were: (i) "International Law on Foreign Investment" - This session was chaired by Hon'ble Mr. Justice K.G. Balakrishnan, Judge, Supreme Court of India and the speakers were Mr. Harish N. Salve, Senior Advocate and Dr. Sri Ram Khanna, Prof. Dept. Of Commerce, Delhi School of Economics, Delhi University; (ii) "Space Law" - their session was presided over by Hon'ble Mr. Justice S.N. Variava, Judge, Supreme Court of India and their speakers were Mr. Dipankar Gupta, Senior Advocate and Dr. Y.S. Rajan, former Vice-Chancellor, Punjab Technical University.

Conference Organized by the Indian Society of International Law

The Indian Society of International Law (ISIL) organised an International Criminal Law Conference from 10-11 December 2005 in New Delhi. Among the themes of the Conference were: The Relevance and Importance of Nuremberg Principles; Defining Aggression, Terrorism, Torture; Critical Assessment of the Ad hoc International Criminal Tribunals; International Humanitarian Law and International Criminal Court; and the International Criminal Court, its Composition, Powers, Procedures etc.

Judge Philippe Kirsch (President, International Criminal Court), Judge Theodore Meron (President, International Criminal Tribunal for

former Yugoslavia), Prof. William Schabas and Prof. Claus Kress, were among the speakers at the Conference.

Forthcoming events

From Jessica Elliott of the American Bar Association International Law Section

The ABA International Law Section's 2006 Spring Meeting will be held at the magnificent Waldorf Astoria Hotel in New York from April 5-8 2006. We expect this meeting to be the largest conference in ABA International's long history. We hope you will attend and take advantage of this unique opportunity to network with leading attorneys, government officials, in-house counsel and legal scholars.

This meeting includes more than 70 programs on numerous international law topics of interest to a wide-range of attorneys. We have organized these programs into seven separate tracks:

- a.. Corporate Counsel Track (14 programs)
- b.. Customs/Trade Track (10 programs)
- c.. Dispute Resolution/Litigation Track (13 programs)
- d.. Law Practice Track (Eight programs)
- e.. Public Law Track (12 programs)
- f.. Regulatory Track (13 programs)
- g.. Transaction Track (12 programs)

For information on the Spring Meeting visit www.abanet.org/intlaw/spring06/home.html. A discounted registration fee is available until 10 March 2006.

Tower of Babel

International Law in the 21st Century – coherent or compartmentalised?

Keynote speaker: H.E. Judge Rosalyn Higgins,
International Court of Justice

In recent years much critical attention has focused on the challenges raised by the proliferation of international courts and tribunals, yet just as important as, and related to, this development is the expansion in the substantive content of international law. Many established areas of law have become more complex; new areas of law have emerged. In this context, the challenges raised by relationship between different areas of law have become acute. How should principles developed in different categories of law relate to each other, for example trade law and environmental law? How should the meaning of separate but similar obligations conceived in relation to the same subject matter, for example state and individual responsibility for genocide, be understood in the light of this overlap? What underlying principles should apply in such circumstances, and to what extent are they capable of universal application? What significance should be

attached to general concepts such as *lex specialis* and the idea of normative hierarchy reflected in UN Charter Article 103 and norms of *jus cogens*?

The conference will attempt to address these challenges, with panels covering a wide range of areas of law and theoretical approaches. Panels will reflect a diverse range of perspectives, and be composed of both junior and established academics (including doctoral students) and practitioners. We hope to keep the conference fee to a reasonable level, with concessionary rates for students and junior academics and practitioners. The conference will run for two full days on Friday and Saturday, with a mixture of plenary and twin-panel sessions and a conference dinner on the Friday evening.

Further details on this and other British Branch events can be obtained from Dr Ralph Wilde at ralph.wilde@ucl.ac.uk