

# ABILA Newsletter

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## MESSAGE FROM THE PRESIDENT

By Charles D. Siegal

It is my honor to take over this column from Jim Nafziger, who served so ably as President of the American Branch for four years.

An essential function of our Branch is to provide avenues for member participation. With that in mind, it might be useful to review the Branch's activities so that members know how and where they might become involved.

The American Branch is one of the approximately 50 regional branches of the International Law Association. The ILA functions through committees, all of which are oriented to specific projects that result in treaties, draft resolutions for governmental organizations, and the like. The ILA's headquarters are in London, and its recently-named executive director is Professor Christine Chinkin, of the London School of Economics and Political Science. Members of the American Branch are automatically members of the ILA to which branches may nominate members. Often membership on an ILA committee follows significant work on a Branch committee. The ILA committees are listed at the end of this Newsletter. In addition, members have access to a "Members Area" of the ILA website, through which they can access the ILA FORUM, an online discussion of international law topics. The ILA also holds biennial conferences. The last one, reviewed in the last Newsletter by Jim Nafziger, was in Berlin in August 2004. The next one, hosted by the Canadian Branch, is scheduled for June 4-8, 2006, in Toronto.

At the Branch level, the majority of the work occurs through committees. Again, Branch committees and chairs are listed at end of this Newsletter. I would encourage anyone who would like to participate to contact the chairs; especially do so if you have an idea for work you would like to undertake with the committee. The unique feature of the American Branch is its goal to facilitate its members' projects. Committees serve two distinct functions. First, they review the work

of parallel international committees, often adding to invite Branch members on the international committees. Second, they may produce their own study or draft or participate in the drafting of amicus briefs. There are a number of new committees on the list, including the International Wildlife Committee, the Use of Force Committee, and the Commercial Dispute Resolution Committee. In addition, some new Chairs have taken over. I am certain that each of the Chairs would be happy to hear from members.

Committee reports are published in the Branch's biennial Proceedings. Professor John Noyes, the Proceedings' longtime editor, has completed an extraordinary productive ten years as editor. We thank John for a decade's worth of diligent service. Professor Jeffery Atik will take over for John.

You may keep up with Branch activities on our website, [www.ambranch.org](http://www.ambranch.org).

In addition to the work on the committees, the Branch organizes, with a number of co-sponsors, International Law Weekend in New York each year and International Law Weekend – West, in Southern California, every other year. The Branch also co-sponsors various regional meetings.

In short, the Branch tries to provide avenues for people to work with their colleagues in areas of interest. We welcome your ideas. My e-mail is [Charles.Siegal@mto.com](mailto:Charles.Siegal@mto.com) and I am sure the Co-directors of Studies, Leila Nadya Sadat ([sadat@wulaw.wusl.edu](mailto:sadat@wulaw.wusl.edu)) and Roger Alford ([roger.alford@pepperdine.edu](mailto:roger.alford@pepperdine.edu)), would like to hear from you, as well.

## INTERNATIONAL LAW WEEKEND – WEST 2005

International Law Weekend - West will be held at **Whittier Law School on February 4th & 5th, 2005**. International Law Weekend - West is a biennial conference convened by the American Branch of the International Law Association. This is the third West

Coast conference convened by the ABILA and follows two highly successful conferences at Pepperdine Law School and Loyola Law School.

International Law Weekend - West brings together legal practitioners and academics to discuss cutting-edge issues in public and private international law. Panels will address a wide-range of topics, emphasizing the impact of globalization on the practice of law. Topics include:

- Torture and War*
- Anti-Dumping Actions Involving China*
- International Institutions and the Rule of Law*
- Dodging the Foreign Bullet: Invoking U.S. Reorganization Law in Cross Border Insolvencies*
- Recent Developments in International Criminal Law*
- So Many Treaties, So Few Results: Strengthening the Effectiveness of Multilateral Environmental Agreements*
- Current Issues in International Pharmaceutical Trade*
- The Value of Comparative Law in Developing a Theory of Human Rights Remedies*
- Corporate Compliance with International Law*
- The Plunder of Cultural Property*
- Choice of Forum and Enforcement of Judgments in International Transactions*
- Cross-Cultural Approaches to Bioethics, Disability, and Human Rights*

The Keynote Lecture on Friday evening will be provided by Donald Francis Donovan of Debevoise & Plimpton. Mr. Donovan has argued international law, arbitration law, commercial law, and other issues before the International Court of Justice, the Arbitral Tribunal Established by the 1930 Hague Agreement, the International Criminal Tribunal for the Former Yugoslavia, and the United States Supreme Court. International Law Weekend – West is open to the public. There is no charge for attending the conference although there is a \$35 charge for attending the Keynote Dinner and Lecture on Friday evening. MCLE credits are also available.

Discounted hotel rates are available at the Hilton Hotel in Costa Mesa. Please contact: 877-836-0293 or [www.hilton.com](http://www.hilton.com) (Group/Convention Code: WLS).

**Cosponsors include:** the ABA Section of Environment, Energy, and Resources; American Society of International Law; Center for International Environmental Law; the International Environmental Law Committee of the ABA Section of International Law; the International Law Section of the State Bar of California; the International Law Section of the Los Angeles County Bar; Munger Tolles & Olson, LLP; the Southern California Division of the United Nations Association-USA; and the University of Redlands.

## **Additional Information**

For additional information about International Law Weekend - West, including the conference brochure, please visit [www.ambranch.org](http://www.ambranch.org) or [www.law.whittier.edu](http://www.law.whittier.edu).

## **MEMBERSHIP**

The ABILA's membership has more than doubled during the last four years. This welcome development has helped revitalize our organization, particularly our committees and International Law Weekends (East and West). Thanks are due to active recruitment of new members by the ABILA leadership and a high retention rate of existing members. Let's all help continue these efforts by each seeking out new members. For membership materials, please contact Eileen Ahern ([eahearn@dpw.com](mailto:eahearn@dpw.com)).

## **BOOK REVIEW**

*State Immunity: Selected Materials and Commentary*  
A. Dickinson, R. Lindsay, J. Loonam  
Oxford Univ. Press 2004  
ISBN 0-19-924326-3

\* Reviewed by David P. Stewart

Member, Executive Committee of the American Branch

The law of state or sovereign immunity has always been rooted in domestic practice. Until the UN General Assembly's adoption on December 2, 2004, of a new UN Convention on the Jurisdictional Immunities of States and Their Properties, the only contemporary, multilateral instrument addressing the issue comprehensively had been the European Convention on State Immunity. Paradoxically, the principal national statutes have been those adopted by common law countries, as most civil law countries lack any positive law on the subject. Moreover, no convenient compilation of relevant domestic laws and international instruments exists.

This collection of national and international materials on state immunity, compiled by three attorneys at Clifford Chance LLP, attempts to fill the void. The effort began in 2000, in preparation for the International Law Association's 69<sup>th</sup> international conference in London, and was apparently aimed at assisting practitioners who might need ready reference to the key texts.

The volume includes the 1972 Basle Convention on State Immunity (with explanatory reports), the 1926 Brussels Convention on Immunity of State-owned Ships (with additional protocol), and excerpts from the 1998 Rome Statute of the International Court of Justice.

The most useful material concerns the U.S. 1976 Foreign Sovereign Immunities Act, with commentary and some case law excerpts, and the U.K. 1978 State Immunity Act also with commentary and explanatory memoranda. Also included, without commentary or discussion of relevant case law, are statutory texts from Argentina, Australia, Canada, Pakistan, Singapore and South Africa.

Regrettably, the compilation was completed before the final text of the new UN Convention became available in early 2004. Some relevant background material is provided, however, including the 1991 final draft articles of the International Law Commission (with commentary) and the penultimate report of the Sixth Committee's Ad Hoc Committee on Jurisdictional Immunities of States and Their Properties adopted in early 2003.

Other included documents, of less importance now given the adoption of the UN Convention, are the International Law Association's 1994 draft articles for a Convention on State Immunities (a revision of the draft initially adopted in Montreal in 1982), the draft Inter-American Convention on Jurisdictional Immunities of States (adopted by the Inter-American Juridical Committee in 1983), the 1991 resolution of L'Institut de Droit International on Contemporary Problems Concerning the Immunity of States in Relation to Questions of Jurisdiction and Enforcement, and an informal English translation of the 2001 resolution of L'Institut de Droit International on Immunities from Jurisdiction and Execution of Heads of State and Government in International Law.

Practitioners and specialists in the field of sovereign immunity will want to have this volume as a reference, along with Fox, *The Law of State Immunity* (2002) and Dellapenna, *Suing Foreign Governments and Their Corporations* (2<sup>nd</sup> ed. 2003). However, the definitive treatment of emerging international practice under domestic statutes and the new UN Convention remains to be written.

## BOOK REVIEW OPPORTUNITY

Oxford University Press has offered to provide complimentary evaluation copies of its international law books to dues-paying ABILA members who prepare short book reviews (no more than 500 words) for publication in the ABILA Newsletter. Members interested in this program should review the list of recently published international law titles on Oxford University Press's Website at [www.us.oup.com/us/catalog/general/subject/Law/InternationalLaw/?view=usa](http://www.us.oup.com/us/catalog/general/subject/Law/InternationalLaw/?view=usa). Members may also receive details

of new Oxford University Press books in their chosen area of interest on a regular basis by signing up at [www.us.oup.com/us/subscriptions/subscribe/?view=usa](http://www.us.oup.com/us/subscriptions/subscribe/?view=usa). Thereafter, they should contact Executive Committee member David Stewart at [stewartdp@state.gov](mailto:stewartdp@state.gov). Mr. Stewart, who serves as the ABILA liaison to Oxford University Press and oversees the Branch's book review program, will work out the necessary arrangements.

## BOOKS BY BRANCH MEMBERS

*International Law and U.S. Foreign Policy*  
By Carl Q. Christol.

This book analyzes the relationship between international law, including the U.N. Charter, and present-day American foreign policy. From the competing perspectives of unilateralism and multilateralism, the book deconstructs terrorism, concerns for national security, American courts best suited for the trial of detainees and unlawful combatants, and fears that some governmental responses have crossed constitutional boundaries. It contains an advanced assessment of all new international criminal tribunals as they deal with genocide, crimes against humanity, the laws or customs of war, and aggression.

The on-going U.S. policy concerns for peace in the Middle East and the presence of a totalitarian regime in Iraq are also presented with a focus on disputed and contending legal and political perspectives. Other chapters deal with climate change and land mines. An addendum deals with the role of the private citizen in the formation of foreign policy.

## JOURNAL OF INTERNATIONAL LAW AND POLICY SYMPOSIUM

On **March 4, 2005**, the U.C.-Davis Journal of International Law and Policy will host a symposium entitled "Romancing the Foreign Investor: BIT by BIT. The primary goal of bilateral investment treaties is to encourage foreign direct investment, and the stability that accompanies economic prosperity, by providing an impartial forum for the settlement of investment disputes. Today that fundamental assumption – that BITs will increase the flow of foreign direct investment – is being challenged by new empirical work as is the wisdom of countries' submitting themselves to an *ad hoc* dispute settlement regime. The U.C. Davis Journal of International Law and Policy will publish the papers from the symposium. For more information, contact Professor Andrea K. Bjorklund at [akbjorklund@ucdavis.edu](mailto:akbjorklund@ucdavis.edu).

## **AMERICAN BRANCH COMMITTEES**

### **ARMS CONTROL AND DISARMAMENT**

Chair: *Larry D. Johnson*  
*johnson9@un.org*

### **COMMERCIAL DISPUTE RESOLUTION**

Chair: *Professor Louise Teitz*  
*lteitz@law.rwu.edu*

### **ENVIRONMENTAL LAW**

Chair: *Professor Gunther F. Handl*  
*ghandl@law.tulane.edu*

### **EXTRADITION AND HUMAN RIGHTS**

Chair: *Professor William Aceves*  
*wja@cwsl.edu*

### **EXTRATERRITORIAL JURISDICTION**

Co-Chairs: *Professor Harold G. Maier*  
*hal.maier@law.vanderbilt.edu*

*David P. Stewart, Esq.*  
*stewartdp@ms.state.gov*

### **FORMATION OF RULES OF CUSTOMARY INTERNATIONAL LAW**

Chair: *Professor Philip M. Moremen*  
*moremeph@shu.edu*

### **HUMAN RIGHTS**

Co-Chairs: *Christina Cerna*  
*CCerna@oas.org*

*Scott Horton, Esq.*  
*shorton@pbwt.com*

### **INTERGOVERNMENTAL SETTLEMENT OF DISPUTES**

Chair: *Peter Becker*

### **INTELLECTUAL PROPERTY**

### **INTERNATIONAL COMMERCIAL LAW**

Chair: *Houston Putnam Lowry, Esq.*  
*HPLowry@BrownWelsh.com*

## **INTERNATIONAL CRIMINAL LAW**

Chair: *Dr. Kelly D. Askin*  
*kaskin@sorosny.org*

## **INTERNATIONAL FAMILY LAW**

Chair: *Professor Barbara Stark*  
*stark@libra.law.utk.edu*

## **INTERNATIONAL MONETARY LAW**

Chair: *James Lynch*

## **INTERNATIONAL TRADE LAW**

Chair: *Professor Alan C. Swan*  
*aswan@law.miami.edu*

## **INTERNATIONAL WILDLIFE COMMITTEE**

Chair: *Professor William Burns*  
*jiwlp@pacbell.net*

## **ISLAMIC LAW**

Chair: *Professor Frank Vogel*  
*vogel@law.harvard.edu*

## **LAW OF THE SEA**

Chair: *Professor George K. Walker*  
*Wake Forest University School of Law*  
*P.O. Box 7206, Reynolds Station*  
*Winston-Salem, NC 27109-7201*  
*Phone: (336) 758-5000*  
*Fax: (336) 758-4496*

## **SPACE LAW**

Chair: *Professor Carl Q. Christol*  
*CarlQC@aol.com*

## **TEACHING INTERNATIONAL LAW**

Chair: *Professor Valerie Epps*  
*vepps@suffolk.edu*

## **USE OF FORCE**

Chair: *Mary Ellen O'Connell*  
*oconnell.44@osu.edu*

## INTERNATIONAL LAW ASSOCIATION COMMITTEES AND U.S. MEMBERS

COMMITTEE NAME	CHAIR	RAPPORTEUR(S)	U.S. MEMBER(S)
Aspects of the Law of State Succession	Gerhard Hafner	Wladyslaw Czaplinski Marcelo Kohen	
Compensation for Victims of War	Luke T. C. Lee	Shuichi Furuya Rainer Hofmann	James Nafziger
Cultural Heritage Law	James Nafziger	Robert Paterson	
Diplomatic Protection of Persons and Property	Francisco Orrego Vicuna	David Bederman Juliane Kokott	Richard Bilder David Caron
Feminism and International Law	Sujata V. Manohar	Annette Lansink	
International Civil Litigation and the Interests of the Public	Catherine Kessedjian	Richard Garnett	
International Commercial Arbitration	Filip De Ly	Audley Sheppard	Charles Brower Philip O'Neill Louise Ellen Teitz
International Criminal Court	Torsten Stein	William Schabas Goran Sluiter	Leila Sadat Michael Schard
International Family Law		William Duncan	
International Human Rights Law and Practice	Martin Scheinin	Andrew Byrnes Menno Kamminga	William Aceves Christina Cerna Hurst Hannum (Alternate) Charles Siegal
International Law on Biotechnology	Thomas Cottier	Michael Blakeney Michael Halewood	
International Law on Foreign Investment	Christoph Schreuer	Amazu Asouzu Peter Muchlinski	Jeffrey Atik Andrea Bjorklund Daniel Magraw, Jr.
International Law on Sustainable Development	Nicolaas Schrijver	Duncan French Ximena Fuentes	
International Monetary Law	William Blair QC		Thomas Baxter, Jr. James Freis, Jr. Michael Gruson Cynthia Lichtenstein Andre Newburg Ernest Patrikis
International Securities Regulation	Edward Fleischman		Barbara Green Roberta Karmel Cynthia Lichtenstein
International Trade Law	E. U. Petersmann	Frederick Abbott Petros Mavroidis Friedl Weiss	Gary Horlick Joel Trachtman John Jackson Alan Swan
Islamic Law and International Law	HE Judge Awn Al-Khasawneh	James Busuttil Khadija Elmadmad	
Outer Continental Shelf	Dolliver Nelson	David Ong A.G. Oude Elferink	John Noyes
Practice and Procedure of International Tribunals	Campbell McLachlan Philippe Sands		
Space Law	Maureen Williams	Stephan Hobe	Edward Finch, Jr.
Teaching of International Law	Neville Botha	John Gamble	Valerie Epps Charlotte Ku Michael Scharf
Transnational Enforcement of Environmental Law	A. E. Boyle	Christophe Bernasconi Gerrit Betlem	David Bederman Gunther Handl Stephen McCaffrey Edith Brown Weiss
UNCITRAL	Paul Volken		

American Branch of the  
International Law Association  
c/o Carlos Pelayo, Esq.  
David, Polk & Wardwell  
450 Lexington Avenue  
New York, NY 10017

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