

# ILA NEWSLETTER

## ADI - ACTUALITES

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### C o n t e n t s

#### EDITORIAL

Here is the second electronic version of the Newsletter (though it is the nineteenth newsletter the ILA has produced). We had a number of favorable comments from members after circulating the last electronic newsletter, although there were also a few messages from members who had had difficulty downloading it – a problem which we hope has now been overcome.

Unfortunately, enthusiasm for the new electronic format has not so far been accompanied by a flood of contributed articles by members. This is a particular problem with the present issue, as this is being circulated so soon after the northern hemisphere's long summer recess. Please let us have any items which you think might be of interest to other readers. Any contributions should be submitted to ILA HQ ([info@ila-hq.org](mailto:info@ila-hq.org)) and will be passed to the Editor. The editor would be particularly grateful for material relating to current developments in international law.

The dates for circulation are: March, June, September, December. We will try to include items received up to the end of the preceding month in each issue.

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## AMBASSADOR GERALDO EULÁLIO DO NASCIMENTO E SILVA

*The following tribute has been submitted by Professor Susana Carmago Vieira (Brazilian Branch):*

On Saturday, July 5th 2003, the ILA - and most especially the Brazilian Branch - suffered the loss of one of its longest standing members. "The Ambassador", as we used to affectionately refer to him in the Branch, passed away due to heart problems.

Ambassador Nascimento e Silva was the Brazilian member of the Executive Council and Honorary President of the Brazilian Branch (over which he presided for many years - he also presided over the Brazilian Society of International Law and was Director of the Spanish-Luso-American Institute for International Law). As a personal friend as much as in my role of Secretary of the Brazilian Branch, I'd like to write a few words about him.

Well past 80, he was perhaps the most active "retired" Ambassador of ours. Not only did he keep up with his work at the *Institut de Droit International* (his daughter, Maria Thereza, tells me she faxed the *Institut* the essay Christian Dominicé had asked him to write in honour of Ambassador - and Former ICJ Judge - Sette Câmara, on the very day of his death. He had dictated it to her...from his hospital bed) and the ILA (he participated in the May 2003 EC), but also at the IMO (I believe it was only this, or at most the past, year that he resigned as President of the Conference of the Parties of the Land Based Pollution of the Seas Convention). He participated in Juries for University Chair contests just as easily as he taught at the Diplomatic School or participated in discussions of the Commercial Association in Rio. He wrote articles for newspapers as well as for academic Journals on Law or Politics.

His ability to speak about international law in a manner that was understood by the most as well as least sophisticated audiences was remarkable. He wrote extensively (in 1985 he taught on The Hague Academy Course on the Vienna Conventions on Diplomatic and Consular Immunities and Privileges, a subject in which, until very recently I believe, he remained "the" author - or at least one of the very few authors - worldwide) and was published in Brazil as well as abroad.

Upon Hildebrando Accioly's death he became responsible (and co-author) of his *Manual de Direito Público*, adopted in most Brazilian Universities as well as in the Brazilian Diplomatic School - *Instituto Rio Branco* (which, for many years, he directed). In 1992 he was the first Brazilian author to write about International Environmental Law (his book *Direito Ambiental Internacional* soon ran out of copies and had to be re-edited). He wrote books on the two above mentioned Vienna Conventions that remain mandatory - and yet his regular articles for the Commercial Association papers were no less interesting.

I learnt so much from him - as did so many people! I remember him stressing the importance of newspaper reading when writing about international law. I remember his constant concern with stressing the impact of technological development upon the development of international law. I remember how strict he was when participating in PhD or other Juries (yes, I was honoured to have him in mine)... because he *lived* international law.

His human dimension (and generosity) fascinated me. There are many interesting stories, but for the sake of

space I will limit myself to two. One about when he was taken hostage (along with eight other Ambassadors) in Colombia and decided to take over cooking and washing dishes because (1) he wanted to make sure the food was safe and (2) he got to speak to his wife to ask for provisions and could thus send undetected messages. He negotiated liberation successfully - *strictly according to international law* - including transportation in a Cuban plane because he said this was the best way to avoid further risk of hijacking (in the recent Peruvian episode I hear the Brazilian Government offered his services as a negotiator, which then President Fujimori refused and it all ended as we know).

I remember when, his sight already failing, he mistook the hotel TV control for his cell phone and only realised this as he got home (Rio). I had organised the Conference, and only heard of this after everything had been solved - instead of simply returning the television control by mail, he got in touch with a local student he knew was interested in studying diplomacy, paid her fare to Brasília (1,000 kms away) where he was giving another conference, gave her a great tour of our beautiful Itamaraty Palace, and the phone was safely (and swiftly) returned.

I owe the Ambassador so much. Not only did he introduce me to the ILA, but he also sent me in his place (to read his speech) to the extremely interesting and pleasant Regional Conference held in Taiwan in 1995 (the Regional Conference we held here in 1999 can be considered a direct result of this action, and influenced the other very interesting one held in Barbados this year). We will all miss him so much - his knowledge, his enthusiasm, his *verve*, his availability, his personal generosity. But I know that, in his new dimension, he'll still be fighting (fencing?) for the rule of international law in our (so much in need) planet.

## American Branch – International Law Weekend, 23-25 October 2003

A reminder that the **American Branch** will hold its **International Law Weekend** on **October 24-26, 2003**. The theme for the conference is “**International Law in Crisis – and in Business.**” If you would like to attend, **please notify Professor Moremen as soon as possible**. He can be reached as follows: e-mail: [moremeph@shu.edu](mailto:moremeph@shu.edu) or telephone: 973-761-9000 ext. 2517.

## Argentine Branch

The Argentine Branch is about to enter into two Agreements with both the Universidad del Museo Social Argentino (UMSA) and the Universidad de la Marina Mercante (UdeMM) for academic cooperation.

Within the frame of this relationship, different Conferences have already taken place on “Universitary Policy” and “The University of the XXIst Century” with participation of relevant personalities of this area, as Dr Juan Carlos Pugliese, Secretary for Higher Education and Professors Norberto Fraga and Pedro García Arango, both Presidents of the above mentioned universities.

In addition, Dr Ricardo R Balestra and Dr Eduardo Clariá have recently lectured on “The international law of the present economical crisis” at a special meeting organized by the Federal Board of Courts and Highest Tribunals of Argentine Provinces. On this subject, also Dr Raúl Etcheverry, the late Dr Pablo Horvath and Dr Héctor Leguisamón introduced their papers in different meetings of the Branch.

## Australian Branch

The activities of the various Chapters over the past few months have been varied and we have benefited from the generous contribution of speakers. A number of the papers can be referenced on the website ([link from www.ila-hq.org](http://www.ila-hq.org) or directly from:

[www.ila.org.au](http://www.ila.org.au)). Members and friends are encouraged to regularly visit the website for updates on forthcoming meetings. A selection of meetings include:

### The Growth of international arbitration services in the Asia Pacific region

This seminar was presented by Damian Sturzaker and Neil Kaplan QC with Dr Andrew Bell as chair. The event was held in conjunction with a joint IBA/LCIA conference on international arbitration. The seminar was well attended by delegates from the leading arbitration centres.

### Current Issues Forum: Confronting Iraq: Does International Law Matter?

This forum was jointly presented by The Centre for International and Public Law, Faculty of Law, ANU, with the Australian and New Zealand Society of International Law (ANZSIL) and the International Law Association (Australian Branch). Speakers included: Professor Andrew Byrnes, Professor Hilary Charlesworth, Professor Don Greig, Dr Penelope Matthew, Associate Professor Don Rothwell and Dr Christopher Ward.

Papers from the seminar are to be published on the ANU web site and submitted to the ANZSIL newsletter.

### The legality of the use of force against Iraq.

This was a twilight seminar given by Anthony Cassimatis, Queensland University of Technology. His paper is on the ILA website.

### China and the World Trade Organisation – An Update.

This was a joint initiative of the International Trade and Business Law Committees of the International Law Association and the Law Council of Australia, who arranged for Mr Peter Rhodes, a representative with the Hong Kong Trade Office, to present a lunchtime seminar.

**International Institute of Space Law: Space Law Symposium** with Mr Ricky Lee as Convenor, School of Law, University of Western Sydney.  
**Clash of Civilisations and Unity of the Genome** a presentation

delivered to the Qld Chapter by His Honour Justice Michael Kirby, on his return from a meeting of the International Bioethics Committee.

## Mexican Branch

The Mexican Branch held a meeting to discuss the international legal grounds supporting the extradition to Spain of Ricardo M. Cavallo, an Argentine citizen who was living in Mexico when arrested and surrendered to a national court in Madrid. He was accused of genocide crimes committed during the Argentinian dictatorship regime (1978-1983). It is alleged that some of the victims were Spanish nationals, thus Spain’s claim for the request under the bilateral treaty. The meeting was well attended and interesting. Dr. Juan Silva Meza, Justice of the Mexican Supreme Court explained the reasons supporting its decision to deny the amparo filed by the Argentine citizen Ricardo M. Cavallo to prevent his extradition to Spain, as requested by the judge (Baltasar Garzón) in Madrid. The Justice emphasized the legal desirability to punish grave crimes against humanity at the international level such as genocide and terrorism thus following the principles of the Geneva Convention. A round table discussion followed.

## Yugoslav Branch

At the Yugoslav Branch Annual Meeting, held in Belgrade on 19 May 2003, the Branch changed its name to “International Law Association - Serbia and Montenegro branch.”

The following new officers of the branch were elected:  
Professor Obrad Racic, as President  
Professor Maja Stanivukovic, as Vice-President  
Mr. Marko Micanovic, as Secretary General

## Arms Control and Disarmament Law

The Committee on Arms Control and Disarmament Law will submit its Final Report at the Berlin Conference in 2004 (details of the Conference are given below). Following previous Committee Reports on *General Observations on the Law of Arms Control* (Cairo 1992), *Legal Restraints on Arms Proliferation* (Buenos Aires 1994), *Legal Remedies for Arms Control Impasse* (Helsinki 1996), *Further Constraints on Nuclear Weapons* (Taipei 1998), and *National and International Verification Measures* (London 2000), the Final Report will undertake a comprehensive review of *International and National Legal Regulation for Arms Control and Disarmament*. It will address contents and procedures for development and implementation of arms control law and its implications for other legal regimes, such as international humanitarian law, economic law, and environmental law. The role of the Security Council and regional arrangements will be critically assessed.

Specific attention will be given to the latest developments in the implementation of existing treaties and related legal problems. New areas of negotiations and regulations request flexible legal approaches to meet the needs of the States Parties. The challenges of terrorism, the proliferation of weapons of mass destruction, the widespread use of small arms and light weapons, and certain activities of non-state actors are directly linked with the adequacy and flexibility of legal instruments for international co-operation. New emphasis is not only to be given to the elaboration and improvement of international regulations, but also to the harmonisation and standardisation of national regulations. The Final Report of the Committee will also evaluate legal aspects of present arms control impasse

es and possible areas of new arms regulations.

The two Rapporteurs, Dr *Erwin Dahinden* (Swiss Branch) and Dr *Bakhtiyar Tuzmukhamedov* (Russian Branch) will soon circulate drafts for consultation. They will also suggest new tasks and a possible mandate for a new *ILA Committee on Arms Regulation*, as arms control and disarmament, being an important part of the wider field of security law, will deserve close attention of and active consideration by the international legal community also in future.

*Dieter Fleck* (German Branch)  
Committee Chair

## International Human Rights Law

There will be a meeting on the Impact of the Work of the United Nations Human Rights Treaty Bodies on National Courts and Tribunals at Turku, Finland 26–27 September 2003.

## Outer Continental Shelf

A meeting of the Committee on Legal Issues of the Outer Continental Shelf will be held at the seat of the International Tribunal for the Law of the Sea in Hamburg on 5 and 6 September 2003. The Committee will be discussing the preliminary reports of the co-rapporteurs, Dr A G Oude Elferink and Dr D Ong. A good attendance is expected at this meeting.

## Space Law Committee

The Committee Chair, Professor Maureen Williams, is pleased to announce that the recent work of the ILA Space Law Committee has been duly reported to the United Nations Committee on the Peaceful Uses of

Outer Space (COPUOS) where the ILA holds the status of “permanent observer”. In April 2003, on the occasion of the annual session of the Legal Subcommittee of COPUOS in Vienna, one of the Committee members, Mr Niklas Hedman (Swedish Branch), on the basis of a report prepared by Professor Williams, referred to the conclusions reached during the 70<sup>th</sup> ILA Conference in New Delhi and introduced various questions which form part of the Committee’s present terms of reference for the 71<sup>st</sup> Conference in August 2004 in Berlin. In June 2003, the general rapporteur of the Committee, Professor Stephan Hobe (German Branch), on behalf of the ILA Space Law Committee, made a presentation to the Full Committee of Copuos in Vienna dealing with the progress made on the topic *Legal Aspects of Privatisation and Commercialisation of Space Activities with special reference to remote sensing and national space legislation*.

## EVENTS

It is hoped to include a report on the recent conference organized by the Russian Branch in the next issue.

### Biennial Conference BERLIN 2004

The dates for the Berlin Conference in 2004 are 16 – 21 August 2004.

**An announcement with preliminary booking form is available on the conference website: [www.ila2004.org](http://www.ila2004.org)** (this can also be accessed via main ILA website). A printed version will also be circulated with the next hard copy of the Newsletter to be mailed from HQ.

The late Julie Dahlitz, a distinguished Australian international lawyer based in Geneva, edited a collection of conference documents on *Secession and International Law*.<sup>1</sup> The United Nations is to be congratulated for bringing the publishing project to its completion. The full title of the publication is *Secession and International Law: Conflict Avoidance - Regional Appraisals*.<sup>2</sup>

Tragically, Julie passed away just as the book was being prepared for publication.

The book provides a most readable introduction to a horribly complicated subject to which there are no easy answers. A reader will find a useful overview of the main difficulties.

The extent of the problem can be seen in recent news headlines. Liberia (where the Americans are being pressured to send in forces), the Solomon Islands (where Australia is doing so) and Bougainville/ Papua New Guinea (where Australia has just withdrawn its force) are all examples of disputes that have secession as a common theme.

The entire inhabited world is divided into "countries". International lawyers call them "nation-states". The word "nation" means an homogenous group of people and "state" refers to the legal, political, administrative, military authority structure governing the "people".

The basic problem is that "nation" and "state" do not always neatly overlap. 80 per cent of the world's borders were drawn up by Europeans. As they explored and conquered the world, so they drew up the boundaries and allocated people to fit their own map-making conveniences, rather than what the local people themselves may have

wanted. The latter often had no say in the matter. For example, part of the problem in the Solomons is that some people do not want to be in the current national configuration.

The book says: *The issue of secession arises whenever a significant proportion of the population of a given territory, being part of a State, expresses the wish by word or deed to become a sovereign State in itself or to join with and become part of another sovereign State.*

Julie Dahlitz organized the round of conferences because she wanted to deal with this issue that is so complicated that governments, non-governmental organizations and individuals prefer to overlook it. She, very daringly, wanted to force us to grapple with the international law principles in the hope that some answers may be found.

On the one hand, the international legal order is based on countries (or nation-states) living side by side in

harmony. On the other hand, the Americans in World War I publicised the idea of "national self-determination" so that peoples in the old Austro-Hungarian empire could form their own countries. They created a momentum that runs on to this day (as Australian forces know only too well from Papua New Guinea/ Bougainville and may find out in the Solomons). These two basic principles can give rise to all sorts of tensions.

This book, the first in an intended series, sets out the basic issues. The tragedy of Julie's early death is that she is not now around to progress the topic to find some new international law principles.

Contributed by **Dr Keith Suter**.

<sup>1</sup> Dr Keith Suter helped organize the Sydney round of the conference series.

<sup>2</sup> It is published this year by the United Nations in New York and Geneva, in co-operation with TMC Asser Press  
ISBN: 90-6704-142-4 (hard cover)  
ISBN: 91-1-000144-3 (soft cover)

## FROM HEADQUARTERS ILA Website Updates

We have upgraded the members' search facility in the members area. Entering the last name (or first few letters) of an ILA member in the search field will give you the main contact details we currently hold for that person (postal address, telephone, fax and email). We suggest that you check that your own details are correct and let us know of any changes. If you do not wish for your details to be available to other ILA members on the website, please contact us and we can remove you from this facility. The path to the members area is <http://www.ila-hq.org/members/members.htm> and you will need the password.

A list of current members for each ILA Committee can now be viewed. To access this, follow this path to the ILA Committee page [http://www.ila-hq.org/html/main\\_listofcomm.asp](http://www.ila-hq.org/html/main_listofcomm.asp), select a Committee and click on the link on the top right of the page called Committee list.

We hope that these updates are helpful to you, please let us have any comments or suggestions.

Dr Martin Glassner (American Branch) attended three meetings at the United Nations last month as a representative of the ILA. Here are his brief reports on each of them:

First was the Fourth Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, 2-6 June. These informal meetings are designed to clarify issues and educate delegates about various Law of the Sea matters through plenary sessions, discussion panels and side activities such as films and seminars. Participants include not only delegates but also representatives of IGOs and NGOs, though the latter, it seems, simply read and distribute statements of their positions on the matters under consideration. All activities are carried out in accordance with General Assembly resolutions and with reference to relevant provisions of the 1982 United Nations Convention on the Law of the Sea and the annual reports of the Secretary-General on Oceans and the Law of the Sea. A final report on the meeting is sent to the President of the General Assembly and publicized by the UN Division for Ocean Affairs and the Law of the Sea. Its principal function is to suggest to the GA Issues that could benefit from its attention under its standing agenda item "Oceans and the Law of the Sea."

This year the two topics discussed were: a) protecting vulnerable ecosystems, with some emphasis on coral reefs and seamounts, and b) the safety of navigation, chiefly capacity-building for the production of nautical charts. This was the first of these informal meetings that I have attended and I was impressed by both the seriousness and professionalism of the discussions and the realization that this is one of the elements in the implementation of the often ambiguous provisions of the Law of the Sea Convention. At least some of

the contents of the reports of the meeting to the GA and those of individual delegations to their home governments may be expected to make their way up to national decision-makers who will thus be enabled - should they be so inclined - to make wiser decisions regarding marine affairs.

The second was the Thirteenth Meeting of States Parties to the United Nations Convention on the Law of the Sea, 9-13 June. This was a much more formal affair and followed a by-now familiar pattern, The meeting received the reports of the three institutions created by the Convention: the International Tribunal for the Law of the Sea, the International Seabed Authority and the Commission on the Limits of the Continental Shelf. The bulk of the meeting's time, however, was devoted to budgetary and financial matters.

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Perhaps the most controversial issue derived from the growing concern over the policy of the Commission on the Limits of the Continental Shelf to maintain "Confidentiality" (read secrecy) in its consideration of States' submissions concerning the outer limits of their continental shelves which extend beyond 200 nautical miles from the relevant baselines, and of the Commission's recommendations to such States. The Commission concluded at its

Twelfth Session in April 2003 "that the recommendations should include an executive summary, containing a general description of the extended continental shelf, as well as a set of coordinates....Such a summary would not contain information which might be of a confidential nature or which might affect the proprietary rights of the coastal State over the data and information provided in the submission...." (CLCS/36, 2 May 2003, para 10). It seems to me unlikely that this compromise has laid the issue permanently to rest.

The final meeting was unusual in that it wore two hats, one might say. It was originally scheduled as the Sixth [biennial] Meeting of Governmental Experts from Landlocked and Transit Developing Countries and Representatives of Donor Countries and Financial and Development Institutions. However, after regional meetings in Asunción, Bangkok and Addis Ababa that prepared action plans to present to the forthcoming ministerial conference in Almaty, Kazakhstan (introduced in my report on the Fifth Meeting in the *ILA Newsletter* No. 15, 2001), it was also designated as the First Session of the Intergovernmental Preparatory Committee of the International Ministerial Conference on Transit Transport Cooperation, scheduled for 28-29 August 2003. The principal item on the agenda of this meeting in New York was to prepare - as far as possible - the final outcome of the Almaty conference.

The New York meeting, held from 23-27 June, was the scene of quite intense negotiations, both formal and informal, based on a draft outcome prepared by a new unit of the United Nations Secretariat, the Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing

States (OHRLLS). The negotiations produced two more drafts. The agreed title is *Almaty Programme of Action*. The more illuminating subtitle, however, is still disputed, along with a number of substantive provisions included in the Chairman's Text, produced near the end of the session. The final text of the *Almaty Programme of Action* should emerge from the Second Session of the Preparatory Committee, to be held in *Almaty* immediately preceding the ministerial conference (i.e., 25-27 August 2003).

As usual, the ministerial conference will be largely ceremonial. The real work will have been done by the various preparatory committees. This is not to denigrate its importance, however. According to a report prepared by the OHRLLS (A/Conf,202/PC/2, 21 May 2003, p.7), "The International Ministerial Conference will provide the international community with a unique opportunity to galvanize international solidarity and partnership so as to assist landlocked developing countries to participate effectively in the international trading system by establishing efficient transit systems."

It will indeed be a landmark in the nearly century-long effort of the landlocked States of the world to achieve a satisfactory degree of free transit across the territory of countries lying between them and the sea. It might rank with such earlier landmarks as the *Barcelona Convention of 1921*, the *1965 United Nations Convention on Transit Trade of Land-locked States* and the *1982 United Nations Convention on the Law of the Sea*. It should achieve such status, but no one will be surprised if it does not.

## Report on a meeting between the International Law Commission and a delegation from the ILA

At the invitation of the International Law Commission (ILC), a delegation from the ILA met with the Commission in Geneva on 29 July 2003. Since its establishment by the UN General Assembly in 1947, the ILC has been working on the codification and progressive development of international law in a number of areas in which also the ILA has been active. Although no formal relations between the two institutions exist, informally there have been many contacts over the years. Many members of the ILC were or are also active in the ILA. For example, former Director of Studies James Crawford was recently also the Commission's Special Rapporteur on State Responsibility. Former Director of Studies Ian Brownlie is a current member of the ILC. And ILC member Ambassador Yamada, a prominent member of the Japanese Branch of the ILA, was very instrumental in arranging this meeting.

The Commission has recently decided to intensify and widen up its co-operation with other bodies working in fields covered by it. The ILA very much welcomed this initiative and the opportunity to exchange views on topics of mutual interest. At the suggestion of the ILC, the meeting concentrated on three topics: the long-term work programme of the ILC, and the current ILC's work on two issues presently under consideration by ILA committees, viz. diplomatic protection and responsibility of international organisations.

The delegation from the ILA consisted of the chairman of the Committee on Accountability of International Organisations, Sir Franklin Berman, the co-rapporteur of the Committee on Diplomatic Protection of Persons and Property, Professor Juliane Kokott, and the Director of Studies, Professor Alfred Soons. The informal meeting was chaired by the current chairman of the ILC, Ambassador Candiotti.

ILC member (and former chairman) Professor Alain Pellet introduced the topic of the *Long-term work programme of the ILC* and explained the process for selecting topics to be considered by the Commission. The Commission annually reviews its list of potential future topics and welcomes suggestions from organisations like the ILA.

Prof. Soons responded by explaining briefly the workings of the ILA and the process for selecting the topics for international committees, and in particular the ways in which the ILA could contribute to the work of the ILC. In this connection he referred to his presentation at the UN congress in New York on the occasion of the 50th Anniversary of the ILC in 1997, on the contribution of the International Law Association to the work of the International Law Commission (published in *Making better international law: the International Law Commission at 50*, United Nations, New York 1998, pp. 137-139). Prof. Soons stated that the ILA would certainly be willing to make suggestions to the ILC after having had a chance to consider this within the appropriate forum next year.

The topic of *diplomatic protection* was introduced by ILC Special Rapporteur

Professor John Dugard. He explained the present state of the work on this topic and focused specifically on two controversial issues on which he thought a contribution from the ILA would be helpful: the increasing role of mechanisms for the protection of human rights (which may have the effect of marginalising the role of diplomatic protection) and investment protection (including the issue of the protection of shareholders). He indicated that the Commission had already benefited from the two earlier reports of the ILA Committee submitted to the London and New Delhi Conferences in 2000 and 2002 respectively.

Prof. Kokott responded by referring, in particular, to the conclusions of the London Conference report on diplomatic protection. This pointed in the direction of a certain marginalisation of diplomatic protection due to the increasing role of the individual as well as to the recognition of *erga omnes* obligations in international law.

A number of other members of the Commission participated in the ensuing debate.

Regarding the topic of *responsibility of international organisations*, Sir Franklin Berman briefly explained the state of the work of the ILA Committee on Accountability of International Organisations which, although it covered a much broader field of 'accountability', would nevertheless also have to deal in this context with issues of 'responsibility' in the strict legal sense, which would correspond to the topic under study by the ILC. The Committee would at all events be presenting its final Report to the

Conference in Berlin in 2004, whereas the ILC's work could be expected to continue well beyond then.

ILC Special Rapporteur Professor Giorgio Gaja then recalled that the topic was a direct sequel to the ILC's earlier project, now achieved, on State Responsibility. He described the very preliminary stage of the Commission's work, and summarised the contents of his first Report.

Sir Franklin Berman felt that in these circumstances it might be most useful if he were to describe briefly, for the benefit of the Commission, some of the major problems which his Committee had encountered. *First*, there was the vagueness and ambiguity inherent in the whole concept of 'accountability', which, however, the Committee had made a major effort to refine, in an essentially practical and empirical way, into its component parts. At some point, without any doubt, 'accountability' shaded into 'liability' but the Committee continued to believe that an exclusive focus on liability would detract from other important aspects of its task. It was obviously different for the ILC given the origin and definition of its topic. *Secondly* there was the problem created by the enormous range and variety of international organisations, not just as regards their functions and areas of operation but also as regards their constitutional structure and methods of operation. *Thirdly*, there was the conceptual and intellectual difficulty in working out, on the one hand, where the boundary lay between the responsibility of the organisation itself and that of its member State in different sets of circumstances (with the possibility also of joint or overlapping responsibility), and on the other hand

in devising a meaningful set of remedies in the case of organisational responsibility as such. He stressed the very great importance the Committee attached to gaining information about the internal workings and practices of international organisations, but the unexpected problems the Committee had encountered in this regard. He hoped that there might be some possibility for the Committee to benefit from information of this kind gleaned by the Special Rapporteur, for example in the replies to the questionnaire he had sent out to organisations.

In response, Prof. Gaja said that he hoped indeed that this would be possible, pursuant to the direct links that had already been established between himself and the Committee, which he would like to develop and pursue. For the Secretariat, Ms Arsanjani said that the difficulties Sir Franklin had alluded to were not the result of ill-will on the part of UN organisations, but of genuine internal difficulties.

Several members of the ILC participated in the discussion on this topic as well.

In conclusion, the chairman observed that the meeting had been very useful to the Commission and that he looked forward to further exchanges of this kind in the future. Preparations for another such meeting next year will be started in time.

Alfred H.A. Soons  
Director of Studies

We have been asked to inform you of the following:

New Oil, Gas and Energy Law Intelligence service, OGEL, online at <http://www.gasandoil.com/ogel>.

OGEL aims to be the principal global internet portal for energy law (regulation, contracts, treaties, regulation, policy, legal cases, voluntary guidelines). Editor-in-Chief is Professor Thomas W Wälde, Jean Monnet Chair of EU Economic & Energy Law CEPMLP/Dundee. OGEL is supported by CEPMLP/Dundee and the International Bar Association (IBA). OGEL has an excellent team of Associate Editors around the globe.

The OGEL intelligence service comprises:

\* OGEL Newsletter, published on a 2-monthly basis, an extensive series of concise abstracts, relating to full articles, downloadable as pdf files. The

emphasis is on 'intelligence', ie comment on the true significance, the essential elements and the wider implications of current developments written by

oil-gas-energy lawyers and regulation specialists with an in-depth understanding of what a new development means. The newsletter also includes a selection of the most relevant recent publications (articles, notes, case reports, official international agency reports).

\* OGEL Archive with ample search facilities, giving access to all OGEL newsletters and articles plus selected articles from the CEPMLP Journal

\* OGEL Bibliography database with bibliographic references.

\* OGEL Knowledgebank, a database of Legal and Regulatory Materials, a growing collection of: laws, regulations, contracts, guidelines, tribunal/court awards.

\* OGEL Forum, a specialised oil-gas-energy-law forum – to broadcast new

developments rapidly, to allow debate amongst the virtual OGEL community and to post queries on specific, professionally relevant practitioner queries.

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<http://www.gasandoil.com/ogel>