

ILA NEWSLETTER

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Contents

FROM THE EDITOR: Professor J. Craig Barker

This issue is made up primarily of news from the London Headquarters. This includes news from the Executive Committee together with a detailed summary of progress of the various ILA Committees, which is intended to allow members to keep up to date with this work, and which I hope will be a regular feature of the Newsletter. The issue also includes a new section on conference announcements. This too will become a regular feature and I would ask all conference organisers seeking to publicise their events to send me the relevant information. Unfortunately, the section on Branch News in this edition is very limited and I would invite all branches to take the opportunity to report regularly on their activities.

I am also very keen to receive some longer pieces for inclusion in the Newsletter. Ideally these pieces should reflect recent work of individuals or groups/branches in relation to the work of the ILA. I would be happy to include any relevant item remembering that the Newsletter does not publish articles as such. Academic pieces of this type should be submitted to ILA's journal, the Forum.

All contributions for this Newsletter can be sent to ILA HQ info@ila-hq.org or directly to me at j.c.barker@sussex.ac.uk.

News from the EXECUTIVE COUNCIL

A meeting of the Executive Council was held on Saturday 20 November 2004 in London

Tribute was paid to Professor Jerzy Sztucki who had died in August after a brief illness. Born in Poland, he had studied in Moscow and was subsequently given permission to travel to Rome where he worked for UNIDROIT. He later settled in Sweden rather than returning to Poland. Mr Peter Carter, an eminent private international lawyer, a Professor at Oxford and long standing loyal supporter of the ILA and the British Branch was also remembered. Paulette Churchill, the widow of John Churchill (former Secretary) had also died. She was remembered affectionately by many present at the meeting.

The Hon Treasurer, Mr Willem Hamel presented the various financial reports. The Branch Contributions received were lower than had been hoped by this time. The Treasurer urged that branches should endeavour to make the major part of their contributions within the year they are due. Approximately 50% of the fees due for 2004 had been received.

The Treasurer pointed out to Executive Council members that although the reserves have increased over recent years, problems will be experienced in the future if income does not

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increase. The Policy and Finance Committee had therefore suggested that the HQ contribution for individual members from branches should be increased from £25 to £30 at the next biennial conference in 2006.

Mr Hamel reported that members of the fundraising committee were currently approaching various organisations in their respective regions to request offers of support. He was hopeful that some results would be available by the next meeting.

The Director of Studies presented his final report which had been prepared in full consultation with his successor, Professor Christine Chinkin. (see more details under **Committee News**)

Professor Soons expressed his hope that the ILA would continue its regular contact with the ILC which he felt was so useful. He again thanked Professor Yamada for establishing this link.

As had been previously reported at the Executive Council meeting, FORUM had been taken over from Kluwer by new publishers (Brill) who are not willing to fund it indefinitely. At a recent meeting with the publisher, the Treasurer had established that they will continue to produce it in 2005, but that alternative funding will have to be found for its future publication.

A questionnaire had recently been circulated to the ILA membership in order to establish how valued it is. The results will be monitored and proposals for its future will be discussed.

The Chairman reiterated his profound appreciation to Professor Soons for his inspiration, initiative and very hard work over the years as Director of Studies. Warm thanks were expressed by the Executive Council members.

Professor Soons replied with his thanks for the gifts of an engraving and book tokens he had received at the dinner the previous evening which would remind him of both the ILA and London. He expressed his gratitude to the members of the Executive Council, to the Officers and to the Secretary of the Association for their support during his term of office as Director of Studies, and he wished his successor much success.

The Chairman expressed the warm thanks of the Executive Council to Professor Stein for the very hard work he had done to ensure that the Berlin Conference had been such a success.

The dates of the Toronto conference had been brought forward (**4–8 June 2006**) to encourage some of those attending the ICCA Conference on International Commercial Arbitration (June 1-3) in Montreal to stay on and attend the ILA conference.

The excursion will take place on 9 June, the day after the final day of the conference itself. This will allow delegates to spend the weekend at Niagara if they should wish to do so.

The Brazilian Branch have not yet decided which location in Brazil will be chosen for the 2008 conference.

The re-elections of both Rt Hon Lord Slynn as Chairman of the Executive Council and Dr Kamal Hossain as Vice Chairman for a further four year term were confirmed.

Professor Soons and Dr Giuseppe Guerrieri (former Secretary & Treasurer, Italian Branch) were co-opted to the Executive Council.

The next Executive Council meeting will be held in London on Saturday 14 May 2005 (*it will start at the earlier time of 10.00*).

The following one will be held on 12 November 2005 in London.

Sata International Law Prize of 2005 of The Asian Yearbook of International Law

The *Asian Yearbook of International Law* is pleased to invite submission of original essays of excellent quality written by young scholars of Asian nationality residing anywhere in the world on a topic of public or private international law for consideration of the award of the Sata International Law Prize of 2005. The value of the Prize is US\$1,500 and is named after Mr. Sata Yasuhiko of Tokibo Co., Ltd., Japan, whose generous gift has made it possible to establish this annual Prize.

The winning essay will be published in the *Asian Yearbook of International Law*. Participants must not be over the age of 40 years on the submission date. Each essay should be accompanied by curriculum vitae of the author. Essays must be written in English, and the length should be between 8,000 and 14,000 words excluding footnotes.

The Editors of the *Yearbook* will determine the winning essay and notify the competitors of the results not later than 31 October 2005. The decisions taken by the Editors will be final. Essays for the 2005 Prize must be received by the Editors of the *Yearbook* not later than 31 July 2005 by post or by e-mail at the following address of the General Editor of the *Yearbook*:

Professor Surya P. Subedi, OBE
General Editor
Asian Yearbook of International Law
C/O School of Law
University of Leeds
Leeds LS2 9JT
s.p.subedi@leeds.ac.uk

International Committees

The three committees which had completed their work at the Berlin Conference: [Accountability of International Organisations](#); [Water Resources Law](#); and [Arms Control and Disarmament Law](#) were formally dissolved.

The mandates of all remaining committees were renewed for a period of four years (or until immediately after the Brazil Conference).

Existing Committees

No successor to the chair of the [International Family Law](#) committee was proposed at this meeting.

Both co-rapporteurs of the [International Securities Regulation](#) committee wished to resign. Successors will be nominated at the next meeting.

Dr Mario Giovanoli had resigned as chair of the [Monetary Law](#) committee, Mr William Blair (British Branch) was appointed as his successor.

Professor Hilary Charlesworth had resigned as chair of the [Teaching of International Law](#) committee, Professor Neville Botha (South African Branch) was appointed to succeed her.

Professor Yuji Iwasawa had resigned as co-rapporteur of the International [Human Rights Law and Practice](#) committee, no successor was proposed as there are still two in place.

Ms Nagla Nassar of the [International Commercial Arbitration](#) committee had also resigned, no successor was nominated.

New Committees

One new committee: [International Civil Litigation and the Interests of the Public](#) was established at this meeting, Professor Catherine Kessedjian (French Branch) will be the Chair with Mr Richard Garnett (Australian Branch) and Mr Gaetan Verhoosel (joining French Branch) as co-rapporteurs.

Professor Chinkin will submit proposals for new committees at the next meeting in May 2005.

Committee Nominations:

Compensation for Victims of War

Professor Natalino Ronzitti
Professor David Ruzie

Italian
French

Member
Member

International Commercial Arbitration

Professor Luca G Radicati di Brozolo
Dr Ignacio Suarez Anzorena

Italian
Argentine

Member
Alt to Prof Naon

International Criminal Court

Dr Roberta Arnold
Professor Fausto Pocar

Swiss
Italian

Member
Member

International Human Rights Law And Practice

Professor Yuji Iwasawa
Dr Nicoletta Parisi
Professor Elena Sciso
Professor Geir Ulfstein

Japan
Italian
Italian
Norwegian

Member
Member
Member
Member

International Law on Biotechnology

Mme Laurence Boisson de Chazournes
Dr Philippe Cullet
Mary E Footer

French
British
Netherlands

Member
Member
Member

Der-Chin Horng
Professor Inger-Johanne Sand

Chinese (Taiwan)
Norwegian

Member
Member

International Law on Foreign Investment

Professor Pia Acconci
 Alan Alexandroff
 Joachim Francis Delaney

Italian
 Canadian
 Australian
 Member
 Alt to Todd Weiler
 Member

M Emmanuel Gaillard
 Professor Ignacio Gomez-Palacio

French
 Mexican
 Member
 Member

Mme Loretta Malintoppi
 Professor Robert Paterson
 Mr Hugo Manuel Perezcano Diaz

Italian
 Canadian
 Mexican
 Member
 Alt to M Barutciski
 Member

Dr Ignacio Suarez Anzorena
 Dr Andreas R Ziegler

Argentine
 Swiss
 Member
 Member

International Law on Sustainable Development

Mr Markus Gehring
 Professor Kenig-Witkowska
 Professor Karl Meessen
 Professor Georg Ress
 Professor Sabine Schlemmer-Schulte
 Kuan-Hsiung Wang

German
 Polish
 German
 German
 German
 Chinese (Taiwan)
 Alt to Professor Ress
 Member
 Member
 Member
 Member
 Member

International Monetary Law

Diego Devos

Headquarters
 Member

International Securities Regulation

Anna Gardella
 Dr Dittmar Hagedorn

Italian
 German
 Member
 Alternate

International Trade Law

Mr Ola Mestad
 Professor Martin Nettesheim
 Dr Andreas R Ziegler

Norwegian
 German
 Swiss
 Member
 Alt to Prof Opperman
 Alt to Prof Richard Senti

Islamic Law & International Law

Leopold von Carlowitz

German
 Member

Outer Continental Shelf

M Jean-Pierre Cot
 Rolf Einar Fife

French
 Norwegian
 Member
 Member

Space Law

Professor Sergio Marchisio
 Mr David Sagar

Italian
 British
 Member
 Member

Transnational Enforcement Of Environmental Law

Professor Ole Kristian Fauchald

Norwegian
 Member

Mrs Elvira Nurmukhametova

Russian
 Member

Study Groups

To clarify the difference between Study Groups and International Committees, the following text has been produced:

ILA study groups differ from ILA committees. Study groups consist of smaller groups of recognised experts working on a discrete issue of international law. Study groups comment on particular proposals or draft texts (for example from the International Law Commission), or survey a particular topic to determine whether it is suitable for further study. Study groups are established by the Executive Council. The membership of a study group is a maximum of ten to twelve people. The members are appointed by the Executive Council upon nomination by the Director of Studies in consultation with the Chair of the study group.

There are two principal categories of study groups: those that carry out research for possible topics for new ILA committees; and those that seek to contribute to the ongoing work of other international organisations (such as the ILC, UNCITRAL or Hague Conference on private international law). The less formal approach of a study group may also be preferred where the object is to carry out a detailed study of a relatively limited area of international law within a short period of time without intending to develop the work further through a committee. The results of the work of a study group (for example reports, recommendations, principles, declarations) can be published under the auspices of the ILA on its website on the sub-site for study groups. Although study groups may hold workshops at the biennial conferences (and indeed are encouraged to do so), their reports are not to be formally adopted by ILA Conferences. They are not therefore recommendations etc of the ILA. Study groups should be of no cost to the Association. The study groups should provide opportunities for younger members to be involved in the academic work of the Association.

The normal length of mandate for a study group is three years and it may be renewed.

Works produced by Study Groups to date (available on ILA website: www.ila-hq.org):

Law of State Responsibility:

Report of the International Law Association (ILA) Study Group on the Law of State Responsibility. Submitted by the Chair of the Study Group to the Special Rapporteur and the Chair of the UN International Law Commission and the ILA Director of Studies (June 2000).

Practice and Procedure of International Courts and Tribunals:

The Burgh House Principles on the Independence of the International Judiciary, (Dec 2004).

Existing Study Group

The Practice and Procedure of International Tribunals Study Group will continue its work on ethical standards for the international bar. This should be completed in time for the Toronto Conference.

New Study Groups

A new study group on the responsibility of international organisations with a mandate to comment on the work in this field being carried out by the International Law Commission and to monitor the practice of international organisations, was established.

There will also be new study group on groundwater. This area had been partially covered by the final report of the Water Resources Law committee, and it is proposed that this study group will comment on the work of both the ILC and UNEP in this area.

The membership of both new study groups will be confirmed at the next meeting of the Executive Council.

Mexican Branch

On September 2, 2004, the Federal Official Gazette published the Law for Approval of International Treaties on Economic Matters.

The philosophy behind this new law is the promotion of the principle of transparency in governmental affairs and the participation of diverse sectors of the society in treaty approval.

The Law develops the Law of International Trade (Published in 1993 as amended in 2003) and the Law Regarding the Making of Treaties (1991). It concerns treaties related to trade, investment, services, technology transfer, copyright, double taxation and economic cooperation. The Law contains 14 Articles which refer to the purpose of the said treaties, the channels of communication between the Senate and the Executive for the approval of treaties, and the participation of State governments, management associations, citizens and labor unions before the Senate.

On settlement of disputes the Law restates (Article 4-1) the three guiding principles established in Article 8 of the 1991 Law of Treaties (Any treaty or inter-institutional agreement which contains international mechanisms for the settlement of legal disputes in which the parties are, on one hand, the Federation or Mexican individuals or legal entities, and on the other, foreign governments, individuals or legal entities, or international organizations, shall: I. Render equal treatment to Mexicans and foreigners who are parties to the dispute, pursuant to the principle of international reciprocity; II. Assure the parties the right to be heard and the due presentation of their defense; and III. Guarantee that the composition of the decision-making bodies insures their impartiality.

In order for members to stay in touch with the work of the various committees, it has been decided to include in this issue of the Newsletter summaries of the work in progress of existing committees

International Monetary Law

The Committee on International Monetary Law of the International Law Association (MOCOMILA) is dedicated to the study of legal aspects of money, payments, currency and financial stability. In the context of the renewal of its mandate for a further four years, it is intended that the Committee's future work will include the following topics:

International financial standards:
Procedural aspects of their development and implementation;
Application to different sectors and corporate structures within the broader financial industry; and
Adaptation of underlying principles from the industrialised economies to emerging markets and other legal traditions (eg, Islamic banking).

Legal issues related to European Economic and Monetary Union, developments elsewhere towards regional currency areas and the use of foreign currencies; each seen from an international perspective.

Cross-border cooperation and challenges in financial industry efforts to combat money laundering and terrorist financing as well as to promote resiliency in the financial sector.

Issues relevant to capital controls in free trade and investment agreements; possibly in liaison with the committee on international law on foreign investment.

Sovereign debt restructuring (monetary and financial law aspects).

International monetary law issues arising from insolvency of financial institutions.

International Commercial Arbitration

At the 2004 Berlin Conference, the Committee presented its Interim Report on Res Judicata in International Commercial Arbitration. The Committee is presently completing its study of res judicata, and has started a study of lis pendens. It intends to present a final report on these two topics in Toronto in 2006.

Space Law

Based on the results of the ILA 71st Conference (Berlin 2004), and having in mind the conclusions on remote sensing and national space legislation, as well as the inter-relation of both these topics with registration issues, the ILA Committee has now become involved in an overview of state practice underlying all three questions, under the heading *Legal Aspects related to the Privatisation and Commercialisation of Space Activities. Remote Sensing, National Space Legislation and related questions*. To this end a questionnaire is being circulated to members during December 2004 as a pre-stage to the preparation of the Committee's Report for the forthcoming Conference in 2006 in Toronto. The problems arising from the use of Earth observation data in international and national litigation, particularly in boundary disputes, will continue to be analysed. Additionally, space debris and dispute settlement, on the basis of the *ILA International Instrument on the Protection of the Environment from Damage caused by Space Debris* (adopted at the 66th ILA Conference, in Buenos Aires), and the *ILA Draft Convention on the Settlement of Disputes relating to Space Activities* (adopted at the 68th ILA Conference, in Taipei), remain under permanent review of this Committee. The Committee has the status of permanent observer to the UN Committee on the Peaceful Uses of Outer Space and reports annually thereto on the results and progress of its work. (See further comment of Professor Maureen Williams, Committee Chair, below)

Cultural Heritage Law

This committee currently has two projects: the first, an on-going one, is to monitor developments related to the UNESCO Convention on Protection of the Underwater Cultural Heritage, which is based on the Buenos Aires Draft Convention of the same name that was drafted by our committee and approved by the ILA at the 1954 Conference. Our second project, the committee's principal focus, involves preparation of draft principles for cooperation in the mutual protection and transfer of cultural material among states.

Feminism and International Law

The Committee on Feminism and International Law has produced a Preliminary Report in 2002 and an Interim Report in 2004 on Women and Migration. The first two Reports dealt with various aspects of gender in refugee law and trafficking in women. The third Report's main focus will be on aspects of purely voluntary economic migration, while updating refugee law and trafficking during the period under review. The Report will be presented in June 2006. The objective of the next Report is to study and elucidate the legal status of the female migrant in the light of the Convention on the Rights of Migrant Workers and Members of their Families, the Convention on the Elimination of All Forms of Discrimination Against Women and other international human rights and labour law instruments. The Committee intends continuing to situate legal knowledge within a broader political, economic and social context and examine the impact of gendered power relations on the mobility of women. The final Report on Women and Migration is designed to bring various aspects of female migration together into a set of recommendations reflecting the existing law and the progressive development of international law in this area.

International Trade Law

The world trading system has evolved not only into the most “legalized” area of international relations. It is also widely perceived as the most important legal and institutional framework for creating the welfare needed for poverty reduction, satisfaction of basic development needs and peaceful international cooperation based on respect for rule of law. The Doha Development Round negotiations in the WTO are likely to continue up to 2007 (provided the US fast-track legislation and trade promotion mandate will be renewed by the US Congress in 2005), and their successful conclusion and legal implementation may require far-reaching legal and institutional reforms of national and international rule-making, adjudication, trade and development policies. As the coming years will remain of crucial importance for the future of international economic law and peaceful international economic cooperation worldwide, the ITLC considers it important to continue its work program on international trade law and related problems of intellectual property law, human rights law, environmental, competition and social law. The effectiveness of any future Doha Development Round Agreements depends on their ratification and political support by domestic parliaments and citizens. Particular attention must therefore be devoted to the apparent problems in worldwide governance. For example, is the postwar paradigm of “embedded liberalism” still adequate, or does the increasing reality of multilevel governance by (sub)national, regional and worldwide institutions (e.g. monetary authorities, regulatory agencies, competition authorities, national and international courts and other law-enforcement institutions) require more democratic forms of multilevel constitutionalism?

It is suggested that the ITLC prepare, for the ILA conference in 2006, a draft ILA Declaration on International Trade Law and Human Rights which should – with due regard to the existing WTO principles and to the limited scope of the

WTO - also recommend any institutional and other WTO reforms that may be necessary for making respect for human rights, rule of law, poverty reduction, and for “sustainable development” in WTO member countries more effective. The increasing number and legal diversity of regional free trade agreements all over the world continue to deserve attention. As the most frequently used dispute settlement system among states, the WTO dispute settlement procedures, practices and reform negotiations will remain a priority subject of the ITLC. The Committee will closely collaborate with other ILA Committees (e.g. on the impact of biotechnology on international law).

Islamic Law and International Law

At the Berlin Conference the Committee on Islamic and International Law decided to conduct two research projects, one being more short term and the other being more long term.

The long term project is to document and analyze the development of Islamic International law in practice throughout history and the contribution this has made to the general development of International Law.

The short term project is to conduct a comparative research with regard to a number of areas in International Law, (e.g. ‘the use of force’, environmental law, diplomatic relations, human rights) from the international legal as well as the Islamic Law perspective.

With regard to the long term project, the decision has been taken to start by looking into the legal history of relations between European maritime powers and Mediterranean Islamic rulers and the early Ottoman Sultans (e.g. treaties of capitulation and diplomatic relations treaties) in the 14th and 15th centuries. The committee is approaching scholars and institutions who could help in conducting the research, which will be multi-disciplinary and require team work.

With regard to the short term project, international law scholars as well as Islamic Law scholars have been approached, who could analyze a certain area of law from both the International Law perspective or the perspective of Islamic Law.

The Committee is also still looking for new members, who are interested in actively participating in either of the two projects.

Aspects of the Law of State Succession

The Committee will focus upon the theoretical aspects of state succession, and in particular on the relationship between state succession, identity and continuity of States. It also intends to check the criteria of the identity/succession and typology of the succession.

International Human Rights Law and Practice

The 2004 Berlin Conference adopted the Committee’s final report on the impact of UN human rights treaty bodies. The Conference requested the Committee to initiate a study on the relationship between general public international law and the international law of human rights. It is envisaged that the Committee will submit an interim report to the 2006 Toronto Conference in which it will provide an overview of the issues arising out of this relationship and in which it will identify one or more topics for closer examination. These might include, for example, state responsibility under human rights law, interpretation of human rights treaties, reservations to human rights treaties or diplomatic protection.

Transnational Enforcement of Environmental Law

The Committee’s mandate is to consider all aspects of the transnational enforcement of environmental law (both national and international) through national legal systems. In particular, the

Committee's mandate includes:

- jurisdiction of national courts with respect to transboundary environmental damage or risk;
- choice of law and forum shopping in environmental litigation;
- transboundary access to justice and public interest litigation in environmental cases;
- and the use of national courts by foreign plaintiffs seeking redress against multinational companies.

Legal Issues of the Outer Continental Shelf

This Committee was established in 2000. Its mandate is to study the regime of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Under article 76 of the 1982 United Nations Convention on the Law of the Sea, coastal States have to submit information on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf, an organ which has been established under the Convention. The Commission shall issue recommendations to coastal States on matters related to the establishment of the outer limits of the continental shelf. Outer limits established by the coastal State on the basis of the recommendations of the Commission shall be final and binding. The implementation of article 76 should contribute to the attainment of precise and stable boundaries between areas under national jurisdiction and the international sea-bed area. Article 82 of the United Nations Convention on the Law of the Sea, which was negotiated in close connection with article 76, lays down rules on payments and contributions by the coastal States with respect to the exploitation of the continental shelf beyond 200 nautical miles. Article 82 can be considered an important element of the common heritage principle as embodied in the Convention.

The Committee is studying the questions raised by the application and implementation of these two and other articles of the United Nations Convention on the Law of the Sea in respect of the continental shelf. At the 2002 Conference of the ILA in New Delhi, the Committee presented a report outlining the issues to be considered in its further work. On the basis of this first report, a second report, mainly dealing with article 76 of the Convention was presented at the 2004 Conference of the ILA in Berlin. This report took into account the work of the CLCS on its rules of procedures and scientific guidelines and the issues arising from the first submissions by coastal States. The next report of the Committee, to be presented to the 2006 Conference of the ILA, will focus on article 82 of the Convention and other issues concerning the substantive regime of the continental shelf beyond 200 nautical miles. This report will also further develop on the 2004 report of the Committee. The work of the Committee is intended to clarify the regime of the continental shelf beyond 200 nautical miles and thus to assist States and other actors in the application and implementation of the relevant provisions of the United Nations Convention on the Law of the Sea.

International Criminal Court

In its First Report, presented in Berlin, the ICC Committee dealt with the UN Security Council Resolutions which blocked the ICC's jurisdiction over nationals of non-State Parties twice for 12 months, and with the attempts of the US to convince other States to enter into bilateral immunity agreements under Art. 98 of the Rome Statute, which is a clear abuse of Art.98.

In its second round of activities, the Committee will deal with the implementation of the Rome Statute within national legal orders on the basis of a questionnaire, which the Reporter in charge, Goran Sluiter from Amsterdam University, will circulate in early 2005

among the members of the Committee, but perhaps also beyond that group. And we intend to present a Second Report in Toronto in 2006.

International Law of Sustainable Development

The objective of the Committee is to study the legal status and legal implementation of sustainable development. For this purpose the Committee's mandate includes: - assessment of the legal status of principles and rules of international law in the field of sustainable development, with particular reference to the ILA New Delhi Principles (now also published as UN Doc. A/57/329), as well as assessment of the practice of States and international organizations in this field; - the study of developing States in a changing global order, particularly the impact of globalization on the sustainable development opportunities of developing countries; - in the light of the principle of integration and inter-relationship, a re-examination of certain topics of the international law of development, including analysis of (i) the position of the least developed countries in international law, (ii) the right to development and (iii) the obligation to co-operate on matters of social, economic and environmental concern.

Compensation for Victims of War

The first project of the Committee is that of stock-taking—a general survey of theories and practices relating to compensation for victims of war. The result is a 49-page Background Report prepared by Professor Rainer Hofmann, Co-Rapporteur, and Dr. Frank Riemann of Harvard University, in time for the Committee's workshop in Berlin, August 2004.

At this workshop, the Committee agreed on a division of labour between the co-rapporteurs: Professor Hofmann would focus on the substantive aspects of the compensation issue; Professor Furuya, the procedural. Both would circulate

their first drafts to members of the Committee for comments and suggestions by the end of 2005. Plans were also made for the Committee to spend a week of concentrated study and research at the Rockefeller Foundation's Bellagio Center in Italy either in the last week of August or the first week of September 2005. Its findings, along with the revised drafts, would be discussed in Toronto in 2006. A proposed Model Compensation Commission would form a major subject for discussion at the 2008 Brazil conference. It is hoped that the final drafts could be submitted, at the latest, to the ILA for adoption at its conference at The Hague in 2010.

Meanwhile all members of the Committee are encouraged to organize working groups in their respective countries to support the work of the Committee.

International Law on Foreign Investment

So far the Committee has convened twice: on 17 April 2004 in London and on 17 August 2004 in Berlin, the main purpose being to develop a work plan. The work plan, as adopted, was presented and discussed at a public workshop also taking place on 17 August 2004.

Committee members have agreed to submit papers to the rapporteurs, which will serve as input for their reports and at the same time constitute contributions to a collective publication of the Committee. The rapporteurs have divided the work so that Professor Muchlinski is responsible for substantive issues and Dr Asouzu for procedural issues. In preparing their papers, Committee members cooperate, and it is the intention that comments are received both from designated commentators and

from the Committee at large. The collective publication will be edited by the chairman, Professor Schreuer, and by the two rapporteurs. It will consist of articles by identified authors. It is planned to appear in early 2006,

It is the aim of the Committee to have an interim report ready by May 2006 for presentation at the Toronto Conference in the summer 2006. It is the hope of the Committee that a final report will be completed by May 2007. It is likely that the final report will take the form of guidelines plus commentary involving normative language, although a formal decision has yet to be taken as to the form. It is possible that the Committee will recommend to the Executive Council that its work be continued within more specific field.

FURTHER COMMITTEE NEWS

Space Law Committee

Professor Maureen Williams writes:

During the Berlin Conference (2004) the Space Law Committee decided to embark on an overview of state practice concerning remote sensing, national space legislation and registration of space objects in the different countries. To this end a Questionnaire was prepared and circulated to the members in December 2004 with a request for concrete information on the subjects in question, in addition to comments and suggestions. The Questionnaire is not only directed to Committee members but to all ILA members with an interest in the topic.

During November last the Committee Chair (Professor Maureen Williams - HQ) and the General Rapporteur (Professor Stephan Hobe, German Branch) met in Argentina, at the University of Buenos Aires, to further

discuss the particulars for the conduction of the Committee's future work. Shortly afterwards, in the course of the UN/Brazil Workshop *Disseminating and Developing International and National Space Law: the Latin American and Caribbean perspective* (Rio de Janeiro, 22-26 November 2004) to which the Officers and other members of the ILA Space Law Committee were invited, the topics under study by the Committee were again the object of attention. In addition to the Committee Officers, Professors Armel Kerrest (French Branch), Frans von der Dunk (Netherlands Branch), Vladimir Kopal (Czech Republic Branch) and José Monserrat Filho (Brazilian Branch and Workshop host) were present.

Interesting, for their implications, were the topics assigned by the UN to the ILA members. Professor Stephan Hobe submitted a discussion paper on *Current and Future Developments of Space Law* which was extensively commented by

Professor Kopal and the audience. The present writer was asked to make a presentation on *Space Law and Remote Sensing Activities*, with Professors Joanne Gabrynowicz (USA) and Monserrat Filho acting as commentators. Professor Kerrest was requested to give his views on international technological cooperation in space activities, and Professor von der Dunk addressed a number of topical questions, *inter alia*, the launching industry and national space law and policy. As may be noted, all these topics come under the present mandate of the ILA Space Law Committee.

The Workshop culminated with a highly illustrative visit to the Instituto Nacional de Pesquisas Espaciais (INPE) and the Centro Técnico Aeroespacial (CTA), in Sao José dos Campos (Sao Paulo).

Many readers will wish to join in our congratulations of Professor Surya Subedi who was recently awarded an honorary OBE in respect of his services to international law and the relationship between the United Kingdom and the Kingdom of Nepal. The bestowal of the award took place on 19 October 2004. During the ceremony, which was held at the Foreign and Commonwealth Office, the Foreign Secretary, Jack Straw and Professor Subedi both made speeches highlighting the important role of international law in the conduct of international relations. The speeches are reproduced here in full with the permission of Professor Subedi.

Jack Straw Awards Honorary OBE to Professor Surya Prasad Subedi

Event: Award of Honorary OBE to Professor Surya Prasad Subedi

Location: Foreign & Commonwealth Office, London

Speech Date: 19/10/04

Speaker: Jack Straw

We are here today to honour a very distinguished international lawyer, who has made a great contribution to the United Kingdom's close relationship with the Kingdom of Nepal.

The words 'international law' conjure up images of the United Nations Security Council in session, discussing affairs of war and peace. But international law also regulates a much wider range of human activity – from the WTO rules which govern world trade, to the Air Services Agreements that let aeroplanes fly between countries, to rules governing the use and abuse of the air or the water which nations share.

International law is the cement which holds the international structure and relationships together. And the United Kingdom is firmly committed to the rule of law in international relations.

Yes, international law still largely relies on the consent of states; it is broken from time to time; it requires social and political pressure to encourage good behaviour, and sometimes firm action to

enforce it. But so, too, does domestic law. International law is not a perfect nor a fully-developed instrument. But after millenia in which the relations between states were governed by the balance of force, today we have a framework of rules which apply to all and which underpin the peaceful coexistence and the prosperity of our countries. That is a sure foundation on which to build.

Professor, you have made a highly-distinguished contribution to our understanding of international law, and to its evolution. Your work, in publications and in your teaching activities, has spanned almost every aspect of it – with a special focus on issues such as trade, investment, development, and the environment, which make a real difference to people's lives.

And your career has also been dedicated to advancing international friendship and understanding. You have served your own country, Nepal, with great distinction, including at the United Nations. Your work on international commissions and committees shows your dedication to putting the principles of the law into practice. And you have been, as it were, an Ambassador for Nepal and for Nepal's relationship with Britain in your work in this country – including at the Universities of Hull, London and Middlesex, and now at the University of Leeds, where I myself was privileged to study law in the 1960s.

This honour is in recognition both of your distinction as a lawyer, and of your great contribution to the friendship and

partnership between nations, and especially between the United Kingdom and the Kingdom of Nepal.

Professor, could I call you forward please.

It is in recognition of your valuable services that Her Majesty The Queen has appointed you to be an honorary Officer of the Most Excellent Order of the British Empire. It is with great pleasure that I, on Her Majesty's behalf, present you with the badge of the Order.

May I congratulate you.

Professor Surya P. Subedi's speech made at the OBE presentation ceremony at the Foreign and Commonwealth Office, London, on 19th October 2004:

Foreign Secretary
My Lord
Excellencies, Distinguished Guests
Friends, Colleagues
Ladies and Gentlemen - and of course
not forgetting my family!

It is a great pleasure and a privilege for me to receive the OBE from you, Mr Straw, the Secretary of State for the Foreign and Commonwealth Office. I am most grateful to you for your kind words. I am deeply touched by your remarks and by your generosity to spare your valuable time for this event. I also would like to thank other members of the FCO, including the Chief of the Protocol Division, for kindly organising this event – which will remain a memorable one for me all my life.

It was with delight that I learned some five months ago that Her Majesty the Queen had graciously made me an honorary OBE. I am most grateful to Her Majesty. I prefer to interpret this honour as being not only for me individually, but also for the people of Nepal, for the British academics who have made a contribution to Britain-Nepal relations,

and for those law academics who have tried to spread the global values of humanity; peace and freedom, tolerance and harmony. I am an international lawyer by both training and profession, with Nepal naturally close to my heart. That is why it is necessary to wear different hats for different challenges, itself not always an easy feat.

Great Britain and Nepal have enjoyed a cordial relationship for some 180 years and this is an occasion on which we may celebrate that relationship. It was Britain, the then mighty colonial power ruling over much of South Asia, which decided to recognize the sovereignty and independence of Nepal in 1923 through a bilateral treaty- even during the heyday of the British Empire. The treaty signified that the British Empire was more civilized than many other imperial powers and was willing to deal even with small powers on an equal footing, provided that these were friendly to the British. Thanks partly to that recognition and partly to the wisdom of certain Independence leaders of India, Nepal's independence was preserved when South Asia was carved up into different entities in the run-up to the British withdrawal from South Asia, at a time when many small kingdoms and principalities were made part of these new entities.

The traditional relationship between these two countries is multifaceted. Of course, the Gurkhas are held in high respect for their bravery and loyalty in Britain. I believe that no other country of *comparable size* has given more support to Britain in its defence of freedom than has Nepal, in battlefields around the globe, for some 180 years. The relationship between these two countries goes even deeper. For instance, we have a sizeable community of British academics interested in different facets of Nepal, including culture, languages, health, mountaineering, and law. The contribution made by the British academic community has been an important one in the development of Nepal. We have an association – the Britain-Nepal Academic Council in London –

and I have had the honour of serving for the last four years as Founder-Chairman of this Council, established to promote Nepal in Britain and Britain in Nepal.

In spite of the political difficulties in Nepal, the third largest number of tourists visiting Nepal is from Britain, numbering around thirty thousand *per annum*. There are a good number of British people who are doing well in business in Nepal. There are others who have given so much to Nepal in different capacity such as teachers, doctors, and charity and aid workers. For instance, I have in this company this evening a good friend who spent time teaching the Nepalese children for a local salary at a school in a remote village in Nepal. Equally, there are a good number of people of Nepalese origin who have made a great contribution to the British society. I salute all of them tonight.

Sadly, democracy has come under attack from those on the extreme left as well as those on the extreme right of the political spectrum in Nepal. A mosaic of many ethnic, religious and linguistic groups, Nepal's future and prosperity depends on the respect for democracy and the rule of law. Indeed, the British Government has been at the forefront of the international efforts to promote democracy and human rights in Nepal, to reduce poverty and to resolve the Maoist problem. In addition to tourism, Nepal has a huge potential for development of her natural resources, including oil and gas as well as hydro-power, not only for domestic consumption but also for export. There is an interest in Britain for investment in these sectors of energy in Nepal and the challenge for us is to cultivate that interest for mutual benefit.

The loyalty I have for both Nepal and Britain is not a divided but a shared one. There is a relatively small community of people of Nepalese origin in this country, ranging from doctors and businessmen to IT specialists; most of them, and I, for one, have always felt welcome and appreciated for the contribution that this community has been able to make - and

this honour is an example. When I go abroad many people keep asking me how is the race relations in the UK? My answer has been that racism may be interested in me but I am not interested in racism. That is why it has not hindered my work or the pursuit of my happiness. Most people like me who have decided to make their career in this country, appreciate the values that this country stands for and the environment that it offers to enable one to give their best to the world.

I enjoy both my life as an academic and the freedom that comes with it in this country. I have taught law at five British universities over the past 15 years and have enjoyed it very much. I was born into an academic family. Therefore, perhaps, I was destined to become an academic. I say to myself: *'ubi libertas ibi patria'*, meaning where there is freedom there is my homeland. I would be a happy man if both of my children, who are here this evening, were to follow in my foot-steps to academia. One of them is determined to do law while the other is equally determined *not* to do law. Well, whatever they decide, my belief is that it is better to have a graduate unemployed son or daughter than a non-graduate unemployed one! Britain offers a superb quality of education at its world-class universities and I am proud to be part of that system. For instance, at my university in Leeds, hardly a day goes by without my encountering an interesting talk, programme, seminar, conference or discussion group on a very wide spectrum of issues ranging from the preservation of the Tibetan language and culture from extinction to the movement of the tectonic plates on the ocean floor, the political agenda behind the Franco-German Alliance, the notion of 'honour killing' in the criminal justice system in the UK, and the survival of certain endangered species in Masai Mara in Africa. This is an example of a university that achieves much and offers an opportunity to explore ideas in the widest range of disciplines possible, in a free and supportive environment.

British universities have the ability to

draw talents from around the globe and have long acted as the houses of intellect for the world. The Law Schools up and down the country are in the business of producing not only lawyers but also the future leaders of the society and the Law School at the University of Leeds is proud to consider you, Mr Straw, as one such very successful alumnus.

One day, when I was taking my son in the car on our daily trip to his school, I was listening to BBC Radio 4's Today programme and you, Mr Straw, were being interviewed about the war in Iraq. I remember your mentioning that you carry the pocket-sized copy of the Charter of the UN in your pocket. I thought: "Oh, I have something in common with the British Foreign Secretary" as I too carry a copy of it in my pocket. The world would be a better place if other foreign ministers around the globe were to do similarly.

Iraq was a difficult and complex matter.

We all know that nations were divided about the justification of war in Iraq and that different international lawyers have come up with different views. This is not an occasion for me to pass on my own judgment on the matter. Nevertheless, we all agree on one point: that is, to see a democratic and peaceful Iraq. We, international lawyers, agreed with you when you said very eloquently in an article that you wrote with your Swedish counterpart in the International Herald Tribune not long ago that "There can be no peace without justice, no freedom without human rights and no sustainable development without the rule of law." This actually captures the essence of what many of us have been trying to promote as international lawyers.

Finally, I would like to thank all of you for coming. I am honoured by your presence here this evening. Among you are my teachers and I am most grateful to you for what you have given to me. I am grateful to you, my friends and col-

leagues, for the support you have given me. I have a small family in the UK and I would like to thank them for their love and support. Deserving a special thank you is my wife, Kokila, who has given me so much freedom over the years that I have needed to pursue my academic interests.

Equally, I think my children have a right to demonstrate outside Buckingham Palace under the banner of "Justice 4 Children" or "Access to Father" as they deserve more time of their absentee father who is away so much at work. I thank them for their understanding.

Thank you for your attention and God bless both Britain and Nepal!

(Dr Subedi is Professor of International Law at the School of Law, University of Leeds, Leeds, LS2 9JT; E-mail: S.P.Subedi@leeds.ac.uk).

RECENT PRACTICE IN RELATION TO THE LAW OF THE SEA

Judge A.Kolodkin made the following Declaration on 18th December, 2004, at the session of the International Tribunal for the Law of the Sea with regard to the «Juno Trader» Case and in the light of some trends and acts which to the opinion of A.Kolodkin are not in accordance with the contemporary international law. Judge Kolodkin has asked for his declaration to be published in the newsletter which we are happy to do.

DECLARATION OF JUDGE KOLODÄIN

1. Every year, the United Nations General Assembly in its annual resolutions on the oceans and the law of the sea appeals to all States to harmonize their legislation to bring it into compliance with the United Nations Convention on the Law of the Sea.

2. Unfortunately, not all States Members of the United Nations that are parties to the United Nations Convention on the Law of the Sea have heeded those appeals. In the "Juno Trader" Case it has been found that the coastal State, the Respondent, has used the expression "the maritime waters of Guinea-Bissau" to mean not only territorial sea of Guinea-Bissau, but also its exclusive economic zone.

On 19 October 2004, the Inter-ministerial Maritime Inspection Commission adopted the Minute in which was stated that the *Juno Trader* "... was arrested ... in the maritime waters of Guinea-Bissau...". However, it is known that the *Juno Trader* was arrested in the exclusive economic zone of Guinea-Bissau and, under the United Nations Convention on the Law of the Sea, exclusive economic zones do not form

part of the territorial sea or "maritime waters" of the State.

4. There is another trend in the application of the United Nations Convention on the Law of the Sea: some coastal States are demanding, in their domestic legislation, prior notification by vessels intending to enter their exclusive economic zones even if only for the purpose of transiting them in application of the freedom of navigation which is guaranteed by article 58, paragraph 1, of the United Nations Convention on the Law of the Sea.

(Signed)

Anatoly Kolodkin

Mr E K Lee

By The Rt Hon The Lord Slynn of Hadley, Chairman

E K Lee made a real personal contribution to the ILA he came regularly to meetings of the Executive Council of which he was one of very few members co-opted because of their personal contribution. He made the Executive Council very aware of the importance of the Taiwan branch and it was largely, if indirectly, through his efforts that visits were made to Taipei by members of Headquarters and other branches and that we had a very successful regional conference there in 1995 and a no less successful biennial conference in 1998. He was much loved, as was Mrs Lee, by all the Headquarters' Officers and many members of our branches. His quiet twinkle as he persisted in reminding us of the Taiwan branch and his genuine interest in the principles of international law endeared him to everyone.

By Bruce Mauleverer, Vice Chairman

Mr E K Lee was a delightful, charming and friendly man. He was also a great diplomat both for his country and for Chinese cuisine.

Even by Chinese standards, both he and his lovely wife were of diminutive stature – and I (6' 4") found myself towering over them.

He ran a restaurant in London (I do not know which one), but it was apparently well known. In particular he kept a list of fine wines (including many fine French wines which were much appreciated by Lord and Lady Wilberforce, amongst others).

He was the most loyal and regular attendee of ILA conferences and Executive Council meetings. He would often have a wise and timely contribution to make. He had a close relationship with the Government in Taipei and with the Representative's Office in London. It was through these high level contacts that he was instrumental in arranging the Taiwanese branch meeting in Taipei following the Manila Conference in 1978 (which Sara and I attended with about 30 other ILA members).

After he retired from the restaurant business, he would still host regular (about quarterly) dinners in the best Chinese restaurants in London. The one that I particularly remember was, and I believe still is, the New World restaurant just off

Shaftesbury Avenue. He and his wife would book an upstairs room and invite the Representative (i.e. Ambassador equivalent) and his wife, Lord and Lady Wilberforce, Lord and Lady Slynn, the Burns and the Mauleverers. He was always the most good-natured and welcoming host. The private room would have a single central rotating table where the many courses of the meal would be distributed – accompanied by fine wines brought specially for the occasion by E K Lee.

He was always keen to promote Taiwan: and frequently spoke of his wish for his country to be recognised as an independent state.

Ambassador Enrique Syquia

By The Rt Hon The Lord Slynn of Hadley, Chairman:

Enrique Syquia, who died on 1st February 2005 in his 75th year, made a great contribution to the work of the ILA both in the Philippines and at Headquarters. In the former he was, from 1974 to 2003, President and subsequently Chairman Emeritus; in the latter he was President from 1978 to 1980 and subsequently Vice President and Vice Chairman. He coupled his work with ILA with membership and office holding in many other international and national law associations most frequently with an international law or comparative law link. His interests, however, went beyond international law, indeed beyond the law, as his association with the Academies of International Business and Political Science showed. He took great interest in Law Asia and in law groups in the United States and South America, in Korea, in bodies such as the World Jurists Association and elsewhere. Reading the long list of his law activities outside the Philippines one wonders not only how he managed to participate in their activities but even how he remembered to which he belonged. Founding and advising the distinguished law firm of which he was the head was the day to day complement to his wide intellectual pursuits in international law.

But this was only part of his activities. He did a great deal of pro bono work as a trustee of educational, ethical and social societies. He was Honorary Consul General to the Hashemite Kingdom of Jordan in the Philippines. From 1996 he

was Ambassador Extraordinary and Plenipotentiary of the Sovereign Military Order of Malta to the Philippines and he carried out a number of important tasks on behalf of it in connection with the Vatican.

In addition he made a real contribution to the academic study and expansion of the law being a full Professor of law from 1976 and publishing substantial books on international law and the Philippines legal system. He was the Publisher of the Lawyers Review from 1974 – 2000.

He was much decorated for all these activities and received more than 100 plaques and certificates for distinguished works. The Grand Cross of the Order "Pro Merito Melitensi"; the Knighthood of the Pontifical Equestrian Order of St Gregory the Great and the knighthood of the Illustrious Spanish Order of Corpus Christi and other awards from the Pope, the King of Spain and of Jordan gave him much pleasure.

His presence at all the ILA biennial conferences from 1974 to 2000 and some of our regional conferences gave everyone pleasure. His smile, his charm, his energy, his enthusiasm for the law and his sureness of protocol (not at all autocratically expressed) were apparent to everyone and he generally ensured that the Philippine delegation was one of the largest – by seduction rather than political whipping. But in addition to his colleagues he brought his family – Leticia always, the children often and they too were all contributors to the success and happiness of our ILA life. My wife and I were very glad that we were able to entertain them at home. His value to me as the Vice Chairman of the Executive Council was great and I felt from the beginning of our relationship in that Council that he had become a true friend. His relationship with Lord and Lady Wilberforce went back longer and was even closer and they both appreciated that he should have published selected fragments of Lord Wilberforce both in the House of Lords and in the Privy Council and that he should have published a sensitive memoir of Lady Wilberforce.

For me it was a privilege, a benefit and a pleasure to have worked with him. His courtesy, his warmth and his outgoing friendliness made the ILA an even better place. He has been rarely outside the Philippines since his health prevented any travel but he will be remembered in the ILA by all who knew him. We express our love and our sadness to Leticia and his family.

CONFERENCE ANNOUNCEMENTS

Fourth Biennial Conference of the IAG/IHO/IOC Advisory Board of the Law of the Sea (ABLOS)

The IAG/IHO/IOC Advisory Board on Scientific and Technical Aspects of the Law of the Sea (ABLOS) is pleased to announce its Fourth Biennial Scientific Conference, which will take place October 10-12 in Monaco. This year's Conference will consist of two consecutive events: a one-day Tutorial Session on the fundamentals of implementing Article 76 of the UN Convention on the Law of the Sea, followed by a two-day Symposium that will explore various topics within the Theme **Marine Scientific Research and the Law of the Sea: the Balance between Coastal State and International Rights**.

Conference organizers invite prospective speakers to submit abstracts that address various aspects of the Symposium theme. These will be accepted until May 31. There will be separate registrations for the Tutorial Session and the Symposium, with discounts available if paid before August 31.

Visit the ABLOS website at <http://www.gmat.unsw.edu.au/ablos/> for more information concerning the Conference, the submission of abstracts, and applications for registration.

ILA (British Branch) 2005 Spring Conference

'Regional Trade Agreements and the World Trading System' University of Edinburgh, 27-28 May 2005

This conference addresses world trade from the perspective of regional trade agreements. The conference has two main themes: the conditions placed on regional trade agreements by the WTO system, and the use of regional trade agreements to pursue higher degrees of regulation than occurs at the multilateral level. Speakers include serving and former WTO officials, government officials, trade negotiators, legal practitioners, and leading academics in the field of world trade law.

There will be panels on the following subjects:

- * The Relationship between Regional Trade Agreements and the WTO
- * WTO Regulation of Regional Trade Agreements
- * Overlaps and Conflicts between Regional Trade Agreements and WTO Obligations
- * WTO-Plus Issues in Regional Trade Agreements
- * Trade Restrictions under Regional Trade Agreements
- * Dispute Settlement in Regional Trade Agreements

Speakers include:

Professor Thomas Cottier, World Trade Institute, Bern
Dr Chad Damro, University of Edinburgh
Professor Piet Eeckhout, Kings College London
Dr Gabrielle Marceau, WTO
Dr James Mathis, University of Amsterdam
Pinar Artiran, European University Institute
Dr Melaku Desta, University of Dundee
Professor Joost Pauwelyn, Duke University
Dr Federico Ortino, University of Trento

Professor Markus Krajewski, University of Potsdam
Dr Soren Schonberg, European Commission
Professor Armand de Mestral, McGill University
Ignacio Garcia Bercero, European Commission
Professor Andreas Ziegler, University of Lausanne
Audley Sheppard, Clifford Chance
Dr Gareth Davies, University of Groningen
Professor Frederick Abbott, Florida State University
Professor Petros Mavroidis, University of Neuchatel

A final program will be issued in due course. For further information please contact Dr Lorand Bartels, University of Edinburgh (lorand.bartels@ed.ac.uk; ph: 0131 650 2024)

ILA American Branch

International Norms in the 21st Century: Development and Compliance Revisited

In the early 1970s, Professor Louis Henkin observed that "almost all nations observe almost all principles of international law . . . almost all of the time." So why is the compliance problem still with us? Has the norm development process caused division within the field between areas of high compliance and areas of seemingly low compliance? Why do our colleagues still ask, skeptically, whether international law is really law?

In 2005, International Law Weekend returns to the twin topics of development and compliance across a wide spectrum of modern-day international legal regimes and issues; for example, the extent of treaty compliance in the world trade regime (brinkmanship v. compromise) compared to compliance with customary norms in public and private international law. We will explore why some of the most vexing compliance questions now pertain to the very institutions responsible for making and implementing international law: UN peacekeepers, the EU commission, the UN Secretariat itself. Join us as we revisit Professor Henkin's observation after thirty years of the development of rights and obligations of various international actors: states, individuals, multinational corporations, and NGOs.

October 20-22, 2005, held at the House of the Association of the Bar of the City of New York, 42 West 44th Street, New York, NY