

INTERNATIONAL LAW ASSOCIATION
SUMMARY OF 77th CONFERENCE – JOHANNESBURG 2016
7 – 11 August 2016

Sandton Convention Centre, Johannesburg, South Africa

International Law and State Practice: Is there a North/South Divide?

Introduction:

A week of sunshine in Jo'Burg; and a blissful 22°C. August here is the African Spring-time.

Johannesburg is the second largest city in Africa, with more than 3 million people calling this bustling metropolis home. Joburg, or Jozi as some prefer to call it, offers visitors an experience as unique and diverse as the city itself. Whether you are on business, in search of a cultural encounter, an adrenaline rush or simply want to relax and unwind for a few days, the city of Johannesburg has everything you're looking for and more!

South Africans speak English, but that doesn't mean you'll always understand them. South African English has a unique flavour, borrowing liberally from the country's most widely-spoken language, Afrikaans, as well as many traditional African languages. For example, in South Africa traffic lights are called "robots" and something really nice is dubbed "lekker." A common greeting is "Howzit?" and if you plan to pick someone up at 3:30, you say, "I'll collect you at half past three."

As the Conference Programme reminds us, *'crime is the national obsession and, apart from car accidents, it's the major risk that you'll face in South Africa. However, try to keep things in perspective, and remember that despite the statistics and newspaper headlines, the majority of travellers visit the country without incident.'*

Conference Programme

On the eve of the Conference The host branch provided a Welcome Cocktail Reception at the L’Incontro Ballroom, Michelangelo Hotel, Sandton.

Opening Plenary Session

Lord Mance, Executive Chair of the ILA, welcomed all delegates and their accompanying persons to the 77th biennial conference of ILA. He said:

This is the first conference held in Sub-Saharan Africa. Its theme is International Law and State Practice – is there a North-South Divide? This reminds us how important it is that international law should serve all countries and all the parts and peoples of the world. The ILA aims to be representative. We have expanded our reach with a number of new branches in recent years, including a new Nigerian branch last year. I was unable to attend the launch in Nigeria, but I did attend and speak at the launch of a new Singapore branch last September, and I have in the last two years also spoken in Paris and Vienna to the ILA’s national branches there. That is how I like to see the ILA working, as an association whose members contact, meet and speak to local branches when they travel abroad often for quite different reasons.

However, with only four African branches, we have a long way still to go on this continent. The four are the South African and Nigerian, the East African and the Egyptian. I will return to this point in a moment.

First, however, let me congratulate Professor Hennie Strydom of Jo-burg University and his team on pulling off and organising this conference, with its rich programme. It is no mean feat, and without doubt a time-consuming and on occasions worrisky one. But here we are, and we owe him and them a debt of thanks. The South African branch was formed in 1995, so is just over 20 years old, and Professor Strydom is going after my address to introduce and express appreciation to its founding president, Professor John Dugard, former dean of Witwatersrand University, chair of the UN Commission on Human Rights inquiry into the situation in the Palestinian territories, ad hoc judge on the ICJ and currently a member of the ILC. I will leave Professor Strydom to say more.

Over the last three or so years, there have been a number of initiatives generated within the ILA. I am grateful to the individuals who have stimulated these. They

have sought to evaluate whether the ILA is fulfilling its aims and potential externally, and also to examine whether its internal governance is fit-for-purpose, to use the UK political jargon. The two aspects are of course connected.

Nowhere more so than in our software system, which operates both as an essential tool for head office and we hope in the future increasingly for branches and provides the external face of the ILA on the web. We determined last year to take the necessary, if painful, financial step of engaging consultants to design and supply a whole new system, which should hopefully serve its purposes for years to come. When this is fully rolled out later in the year, I am led confidently to expect that it will offer greatly improved facilities and opportunities for the ILA and its branches worldwide.

Amendment of the Constitution: Marked up copies of the constitution showing the proposed changes are available. The relevant clauses are 3.2.7, 5.4 and 6.12. The first is to take account of modern methods of communication. The second is to limit the number of trustees required, which will avoid the problem that some officers might not wish to act and ease formalities, when and if signatures are required. The third is to enable a simplified and speedier means of taking Executive Council decisions by consensus between meetings, again using modern communications methods.

Internally, we retain as our executive organ the Executive Council. We would urge branches to ensure that their representatives on the Council are chosen from active members who truly represent the relevant branch and are able for that purpose to attend its twice yearly meetings. These have their social side, but membership of the Executive Council should not be seen as a job for life. Renewal and change bring new ideas. While it remains the primary executive organ, the Council has at the same time been prepared to recognise the need for a smaller more manageable body to deal on a delegated basis with some decision-making decisions, and the Policy and Finance Committee or General Purposes Committee is that body. Again, we need to keep the membership of that Committee under review, and ensure that it is refreshed by new blood.

On a wider basis, we are conscious that the world has many more countries than are represented by our branches. We have at present 57 branches, including our Head Office branch which basically accepts members who have no local branch to join. The 57 branches cover rather more than that number of countries, because some are regional, for example the East African or the Caribbean. All the same we

cannot claim to represent more than about one-third of the countries of the world. And our branches and membership are not equally distributed across the world. I have already mentioned the African position. Prof Lavanya Rajamani has done a helpful analysis of this point.

In this light, it is particularly valuable that this conference is held here, to encourage wider awareness of the role of international law and wider interest in supporting it in Africa. It may be no coincidence that the ILA committee which has the highest proportion of developing country members in its composition is our committee working on International Criminal Law, which is chaired by a South African, Professor Mia Swart.

One initiative which has been a resounding success is the ILA Scholarship Fund. This originated in an idea led by Catherine Kessedjian, for the past two and more years president of our French branch. The fund's objectives focus on younger persons. It aims to facilitate involvement in the ILA activities of younger people from all over the world, "particularly in countries where the ILA is not present", enabling them to attend conferences like the present and intermediate conferences held for example regionally, getting them interested in international law, in the hope that they will be the ILA's future ambassadors in their own countries and that through them the rule of international law will be further expanded. As Nelson Mandela said: "Education is the most powerful weapon which you can use to change the world."

The Scholarship Fund was launched in 2014, it has received considerable branch and personal support, and I commend it to you as a charitable fund which surely deserves further and still wider annual support. It enabled a number of students to attend the 2014 Lisbon regional conference, and it now enables 11 candidates from all over the world to be present here today, including four from four countries of Sub-Saharan Africa. You will find details of the criteria which each of them had to satisfy on page 48 of your conference booklet. They had also to list any papers they had written and write a short paper on the conference theme. There was a particularly strong group of candidates. The names and details of the 11 who were successful also appear in your booklet at pages 49 to 52. You can see that the wide geographical spread shows how well the fund has fulfilled its aims.

But this is not all. At page 52, you will see that, under the redoubtable leadership of Willem van Genugten of our Dutch branch, a further matching group of 9 scholarships have been made available by the generosity of his family, friends and

colleagues in conjunction with the Dutch Ministry of Foreign Affairs, and Tilborg University, in the Netherlands and North-West University, SA. Of these, 8 out of 9 come from Africa.

Let me therefore introduce our scholars by asking each to stand in turn, so that you may greet them. [Lord Mance then introduced each of the 20 scholars.]

Can I pay tribute to the sponsors of both the ILA fund and of Willem's fund, and again encourage any who would like to lend further support to do so, for it will assuredly be needed and valued. Please speak to our scholars and you will know how much.

Finally can I also pay tribute to and thank those who gave unstintingly of their time and skill to consider and evaluate the considerable number of applications for funding which were received, particularly: Bruce Mauleverer (chair), Prof Cynthia Lichtenstein, Dr Sarah Nouwen and Prof Lavanya Rajamani.

The work of the Scholarship Committee has also drawn attention to another possible need, that is to support more experienced practitioners from developing countries in attendance at ILA events and conferences. This would require a different sort of funding exercise, but one which it will be worth considering.

May I now turn to an important part of the business of this opening session. We have over the last two years enjoyed the always outspoken and energetic Presidency of Professor Ruth Wedgwood, of the US branch which so successfully organised our joint conference with ASIL in April 2014. We thank her for her services, and would like to commemorate them with this small token. [Lord Mance then gave Professor Wedgwood the insignia of Vice-President].

At the same time, the Full Council yesterday resolved that Prof Hennie Strydom should be elected as President in her stead for the next two years, and I would ask Ruth to hand over the insignia of office to him. [Professor Wedgwood then handed the insignia of office to Professor Strydom].

I declare this 77th biennial conference open, and invite Prof Hennie Strydom in his new capacity to address you. After that, you will hear from our Director of Studies, Prof Marcel Brus, and then Prof Mia Stuart will introduce Judge Navi Pillay, former member of the ICJ and UN High Commissioner for Human Rights from 2008 to 2014, who we are delighted and honoured to have as our keynote speaker to start the conference on a proper substantive note.

Professor Hennie Strydom, the newly elected President of the International Law Association then addressed the Opening Session:

He welcomed: *The Honourable Lord Mance and Lady Justice Arden, The Ambassador of the Republic of Ukraine, Mr Ihor Turyanski, Justice James Crawford of the International Court of Justice, Professor John Dugard, the first President of SABILA [the South African Branch of the ILA], Mr Arnold Pronto, representative of the UN Office for Legal Affairs, and a member of SABILA and other dignitaries.*

Today we are finally gathered here for the opening of the 77th Biennial Conference of the ILA. It gives me great pleasure to welcome all of you on behalf of SABILA. We are grateful for your support and we wish you a memorable stay in South Africa. May the conference meet with your expectations.

The planning of an event like this is not without its highs and lows. That much we accepted from the outset when we submitted our bid about 4 years ago to host the conference in 2018. But, as many of the delegates are aware, subsequent developments have caused the conference to move closer in time to this year.

At the occasion of the opening ceremony allow me to share with you some of the challenges we encountered along the road. This I will balance with an overview of some positive features. Among the challenges there were a number of surprises, which, contrary to all outward signs four years ago, caused us to re-think and re-configure our original plans. What mostly interrupted our initial planning were, firstly, the wider consequences of a failing national economy which is now sailing close to junk status according to the rating agencies and a zero % growth rate, unfortunate developments that are not unrelated to disconcerting and damaging political conduct in recent years; secondly, the lower than expected registrations, which, at the start of our planning, were realistically assessed and adapted from attendance figures at previous conferences; and thirdly, the disappointing responses by the legal profession and a government department or two we thought would, in particular, be interested in supporting an international law conference of this magnitude taking place on home soil. So, excuse the absence of bells and whistles; we decided instead to concentrate on the essentials.

We also could not accommodate all requests for parallel sessions. One rather amusing one was the subject-matter of a handwritten fax by an elderly gentleman from the UK. He wrote to us requesting an investigation by the ILA into the effect of botulism on the mental state of Oscar Pistorius at the time of the killing of his

girlfriend, a case that seemingly gripped the attention of people far beyond the borders of this country. I must admit that I was not aware of this illness, which, apparently can be caused by a bacterial infection affecting neurotransmissions to the muscles. It also has some link to the word 'botch' which, as you know, refers to a clumsy handling of a matter. Given the tragic event I will leave it at that...

On a more serious note, it is perhaps more important to focus on those aspects of the conference that stand out. I shall mention only a few. Firstly, we have delegates from 58 countries, which include 8 African countries. Not surprisingly, with 44 registrations South Africa has the largest number of delegates with the majority made up of non-ILA members. We consider this significant for our objective to grow the number of African members in the ILA, given their current under-representation. Secondly, the programme sessions have attracted a number of outstanding international law scholars and we are in particular grateful for their support. Thirdly, thirty ILA Committees and Study groups will exhibit their work in the form of reports and open discussion sessions, and as we know, it is these committees and study groups that constitute the engine room of the ILA. Fourthly, we have among us twenty young scholars from different regions of the world. Their attendance is made possible by two separate scholarship funds that were set up and managed by the ILA's Sponsorship Committee and by Professor Willem Van Genugten from the Netherlands Branch, respectively. The individual ILA members involved in these initiatives deserve a special word of thanks. We are particularly grateful for the young African scholars on the list of scholarship award winners.

This brings me to another highlight for SABILA. We have decided to announce at this occasion our resolve to honour the legacy of Professor John Dugard, who was SABILA's first president after South Africa re-joined the international community of states in 1994. This will take the form of an annual or biennial John Dugard Lecture on International Law, the details of which will be decided at our next AGM. Through his inspiring contributions as an internationally respected scholar, especially during the time of apartheid, and the intellectual legacy he has left behind, John Dugard has played an historically important role in the development of international law as a legal discipline in this country. The landmarks of his career are defined by academic appointments at several universities; as visiting professor or fellow at universities in Britain, the US, Australia, The Netherlands and Switzerland; his judicial office at the International Court of Justice; his work as a member of the International Law Commission and as a UN Special Rapporteur; and as a member of various International Law Bodies. John, we are

honoured to have you and your wife, Letje, with us and we wish you good health as an octogenarian and beyond.

In conclusion I want to express my sincere appreciation for the following persons. They appear in random sequence:

- 1. For Lord Mance, who plays a leading role in the life of the ILA and whose presence is important to us;*
- 2. For Taryn Brooks who played a key role in the organization of the event, often under difficult circumstances not of her own making and for performing a thankless job without losing her cool;*
- 3. For Juliet and Natalie at the ILA HQ's who provided assistance and advice whenever this was needed; and for the functions they still have to perform in the course of the week;*
- 4. For Ruth Wedgwood, the outgoing president of the ILA for coming all the way from the US to perform her ceremonial and other functions;*
- 5. For the members of the SABILA organizing committee who assisted me in various ways without asking too many questions; and for their role in putting together the panels for the parallel sessions;*
- 6. For Catherine Kessedjian, my French counterpart, for various and crucial interventions, now and certainly in the future;*
- 7. For Christopher Ward, the president of the Australian Branch, for his presence. I wish you all the best for 2018 and I am looking forward to be in Sydney.*

The Keynote Address was given by **Judge Navi Pillay** (UN High Commissioner for Human Rights 2008 – 2014). She was introduced by **Professor Mia Swart** from the University of Johannesburg. Professor Swart said that Judge Pillay had been born in 1941. She was the first woman to start a law practice in her home province of Natal in 1967. She was the first non-white member of the South African High Court. In 2003 she was elected as a judge on the International Criminal Court in the Hague, where she remained until August 2008. She was a member of the Women's National Coalition and she co-founded Equality Now, an international women's rights organisation.

British Media had described Judge Pillay as an '*international troublemaker.*' She had criticised Israel in respect of the Israel/Gaza dispute.

Judge Pillay gave this address:

It is a daunting privilege to address such an audience!

The United Nations has advanced resoundingly from a state - centred system of Traditional International Law, based on the pre-eminence of state sovereignty, into a norm-based institution. Its goals are clear: while respecting the freedom of sovereign states, it is also dedicated to protecting and promoting Peace, Security, Development, Rule of Law and Human Rights for the people of the World. The member states of the UN have adopted Universal Standards of Values and Norms as well as the tools to implement them.

International Law increasingly plays a role in shaping state policy as well as Domestic Law, to advance, collectively, the protection of Human Rights. There has also been marked growth in International Criminal Law, with its emphasis on the criminal responsibility of the individual. Progress in International Criminal Justice lay dormant for half a century after the Nuremberg and Tokyo Military Tribunals.

But the landscape has shifted rapidly over the past twenty years.

The establishment of the UN International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993, and the United Nations International Criminal Tribunal for Rwanda (ICTR) in 1994 was followed by ad hoc Tribunals for Timor Leste, Kosovo, Sierra Leone, Cambodia and the courts of Iraq and Lebanon. The African Union is presently setting up a hybrid Court in Central African Republic. With the adoption of the Rome Statute in 1998, the International Criminal Court is now available to render justice for the serious crimes of genocide, crimes against humanity, war crimes and the crime of aggression.

Yet the idea of developing Universal Standards of Human Rights is relatively new and this use by the international community of judicial power backed by punishment to deter serious violations of Human Rights, constituting international crimes, is an even more recent development.

International Law sets clear standards of equality, freedom from discrimination and human dignity for all persons. The United Nations' Universal Declaration of Human Rights is the foundational framework for Human Rights, and today, all the countries of the World subscribe to its principles. Most constitutions and national legislations embody them and they have been strengthened over seventy years of

steadfast activity by states, involving the adoption of conventions, treaties, resolutions, and declarations.

*In accordance with the fundamental tenets of International Humanitarian Law and International Human Rights Law, states accept that it is **THEY** that carry the foremost responsibility to protect the human rights of their people - All Rights - civil, political, economic, social and cultural rights and to fulfil their demand to be free from fear and want.*

At the same time, the UN subscribes to the principle that when states need assistance in implementing their responsibility to protect their own people, the international community should assist; this is critical where civilians are at risk. International Law is also clear that where a state manifestly fails to protect its population against massive violations of Human Rights, the international community must intervene to protect, using the means prescribed and circumscribed by the Charter of the UN. Unfortunately state sovereignty is often invoked to block UN action to protect against serious Human Rights violations and governments, themselves, by their actions or omissions are often culpable of tolerating abuses.

The conflict in Syria has entered its sixth year - spreading its tentacles across borders, causing the loss of more than 200,000 lives and displacement of millions of people in the region. The atrocities being perpetrated by the Islamic State in Iraq and the Levant (ISIL) particularly shock our collective conscience. Employing sophisticated modern technology of the digital era, ISIL has managed to recruit young fighters across the World in a most insidious manner.

Last week the UN Security Council resolved to send troops into Burundi. Other complex and potentially highly eruptive conflicts are underway in Afghanistan, the Central African Republic, the Democratic Republic of the Congo, Libya, Mali, The Occupied Palestinian territory, Somalia, South Sudan, Yemen and Ukraine. These crises hammer home the full cost of the failure of the international community to prevent conflict. They combine massive bloodshed and devastation of infrastructure with acutely destabilising transnational phenomena, including terrorism, the proliferation of weaponry, organized crime and spoliation of natural resources.

None of these crises emerged without warning; they built up over years of human rights grievances, deficient or corrupt governance and lack of independent judicial and law enforcement institutions, discrimination and exclusion, inequities in

development, exploitation and denial of economic and social rights and repression of public freedoms. Although the specifics of each conflict could not necessarily be predicted, many of the human rights complaints that were at the core of a confrontation were known; they could and should have been addressed.

Early actions to address human rights concerns and protect states by warding off the threat of violence; recognition of this urgent truth, and a broader conception of national interest, would be more appropriate to a century in which a growing number of challenges face humanity as a whole. A number of good practices that address both proximate triggers and root causes have emerged. These include strengthening civil society actors, increasing participation by women in decision-making and dialogue, and addressing institutional and individual accountability for past crimes and serious human rights violations.

While conflicts raging unabated in a small number of countries is concerning, it is nevertheless heartening that the greater number of states across the globe are making serious efforts to advance the UN agenda to advance Human Rights. Credit for that should go to the countless brave and committed civil society activists, defenders, lawyers and journalists who, over decades have slowly succeeded in firmly rooting International Human Rights norms in their societies. It is vital that democratic space for civil society be expanded in international fora and within states.

Many civil society organisations, human rights defenders, journalists and political opponents continue to operate in an increasingly hostile environment in many countries and face restrictions in the name of national security, counter terrorism, public order and regulation of NGOs and the media. The arrest and detention of a large number of civilians, including judges, ongoing in Turkey is deeply troubling, as is the detention of opposition party members in Hungary. In the DRC, there has been an increasing number of arbitrary arrests and disruption of peaceful protest. In Burundi, electoral violence, with protests being violently suppressed by security forces led to more than 400 people being killed and displacement of 145,000 refugees into neighbouring states. Restrictions on fundamental rights also continue in Zimbabwe, Eritrea, Gambia, and Ethiopia.

De facto one-party systems, and a winner takes all approach to elections continue to dominate the political landscape across Africa with a number of incumbent presidents seeking to prolong their stay in power as witnessed in Congo, Uganda, The DRC, Rwanda, and Burundi.

Some signs of progress include The African Union's declaration of 2016 as the year of Human Rights in Africa to mark the 30th anniversary of the entry into force of the African Charter in 1986. It aims to raise awareness in particular of women's rights and focus on the progress made across the continent, as well as the major challenges and obstacles encountered. It is also committed to end child marriages by 2030.

The successful trial of the former dictator of Chad, Hissene Habre sets a new benchmark to end impunity in Africa. It marks a significant step forward in holding high profile human rights abusers to account in Africa and could be an important model of how hybrid courts can reconcile the often conflicting demands of International Law and National Sovereignty. The case is the first exercise of universal jurisdiction on the continent; and the first time a former African head of state has been prosecuted for crimes under International Law.

It is disturbing that in contrast, the AU saw fit to pass a resolution providing immunity from prosecution of serving high level officials. Fortunately, the so-called threat of withdrawal from the ICC did not reach the level of an agenda item at the recent AU summit in Rwanda. The importance of International Criminal Justice systems is that there should be no impunity for serious crimes and justice and the rule of law must be upheld.

In his first address to Parliament as President of democratic South Africa, Nelson Mandela said:

"The memory of a history of division and hate, injustice and suffering, inhumanity of person to person should inspire us to celebrate our own demonstration of the capacity of human beings to progress and go forward."

Our constitution has moved us away from a culture of violence and retaliation to a society of values and respect for Human Rights. Mandela signed up to all major Human Rights treaties and conventions; including ICCPR, the CESCRC was signed earlier this year. The SA Constitutional Court declared the death Penalty unconstitutional and contrary to our values of UBUNTU. These are important steps and should enable S A to take the lead both inside the country and in its exchanges with other countries, especially in Africa to advance Human Rights.

The Office of the UN High Commissioner for Human Rights, that I occupied for six years, is well placed to monitor the Human Rights performance of every state and to offer practical assistance and guidance. GA Resolution 48/141 charges the

office with “principal responsibility” for human rights, with the mandate to promote and protect all Human Rights for all in all states. The High Commissioner plays a crucial role in safeguarding the integrity of the three pillars of the UN: Peace and Security, Human Rights and Development.

OHCHR is the secretariat of the Human Rights Council in Geneva, and services the Special Procedures system of independent experts appointed by the UNGA and the HRC; and services the ten treaty bodies. The office prepares the human rights reports of every state. Through the mechanism called Universal Periodic Review, the HRC reviews the Human Rights record of every state, makes recommendations and reviews implementation. The process is public and open to NGOs. The reviews are conducted in a universal, impartial and non-selective manner.

The process is now in its third cycle, with 100% participation by states. Let me tell you, from hands on experience that no state emerges with a perfect record and it is completely misguided to entertain the perception that the North is more compliant than the South. It is true that well established democracies have independent mechanisms and active civil society organisations to advance human rights protections, but under the independent scrutiny of the HRC, States receive hundreds of recommendations from other states and seriously engage in addressing them.

The HRC has brought strength and flexibility to the International Human Rights system. The UPR has had remarkable success in encouraging states to recognize and resolve gaps in human rights protection, with new emphasis on dialogue with civil society.

The Special Procedure system remains nimble and deploys great expertise; for example, Prof. Christof Heyns, of the University of Pretoria is the Special Rapporteur on extra judicial executions and arbitrary killings. He has investigated and produced reports on the use of armed robotics or drones, especially by the USA, deeming the indiscriminate killing of civilians, unlawful executions. Five SPs including the SP on torture visited US prisons, and sought access to the Guantanamo facility. They found the imprisonment of individuals in isolation for periods of ten years and over to constitute torture.

The ten treaty bodies also monitor compliance by states with their obligations. You will recall that the CAT (Committee against Torture) and CRC (Committee on the Rights of the Child) critically reviewed the Vatican’s failure to protect children against sexual abuse by priests.

It is axiomatic that every country has a vital interest in defending a principled structure for a common set of global values. Human Rights violations and non-compliance with the rule of law are among the root causes of every type of instability and conflict, which means that every state has an interest in detecting gaps in its human rights protection. Regrettably, the reports and recommendations are frequently met by stone-walling or denial by states; and civil society activists remain under threat in many countries.

As you know, the UN Human Rights Commission and the mechanisms I have described were an outcome of the world Conference on Human Rights held in Vienna 23 years ago, in 1993.

At this conference, western countries favoured civil and political rights; the Eastern bloc and many developing countries argued that economic, social and cultural rights and the right to development, had a priority. In addition, a sizeable group of states were vigorously arguing that the Universal Declaration of Human Rights was the product of a specifically western culture, and that in reality; human rights should be considered relative to the characteristics and traditions of different cultures.

And yet, as discussions unfurled, a consensus emerged; the key to this is the universality, indivisibility, and interrelatedness of all Human Rights. You see, a number of States had been resisting the entire concept of economic and social rights - deeming them aspirations rather than rights intrinsic to human dignity and freedom. The vision of an inter-related and interdependent constellation of human rights allowed for economic and social rights to be on board, as well as the right to development. The debate regarding the so-called cultural specificities of human rights was resolved with an equally deft and inclusive approach. Of course all countries are indeed not the same, and all voices must naturally be heard; but these cultural specificities in no way erode the universality of Human Rights.

The formula that ultimately achieved consensus on this point was: you choose your path, but the goal is something we all hold in common. Your specificity will influence the way you move forward; but that goal of human dignity and human freedom, via implementation of human rights elucidated in the International Bill of Rights is something we all share.

And so the assembled delegates overcame major differences on contentious issues such as universality, sovereignty, impunity, and how to give voice to victims. The result was a powerful outcome document The Vienna Declaration and Programme

of Action (VDPA). It firmly entrenched the principle of universality by committing States to the promotion and protection of all human rights for all people, regardless of their political, economic and cultural systems.

For a long time, economic, social and cultural rights were not given proper attention and viewed, especially by donor states, as aspirations and not rights. Yet the right to food, to health, clean water and sanitation, housing, education and decent work are priorities for developing countries. Human Rights are interdependent, and inter related and cannot be enjoyed without full access to all rights.

Within and among states, acute income inequalities are evidence of failures of social and economic governance. There is a fundamental need for more consistent application of Human Rights Standards in the economic sphere. The OHCHR made every effort to put forth a robust people-centred set of standards to the sustainable development goals.

You will recall that there was a total absence of the words “Human Rights” in the original Millennium Development Goals. The new post 2015 SDGs adopted in 2015 represents a paradigm shift: They will be universal and not addressed to developing countries alone. It is a more enlightened model of development, offering a balanced framework and Human Rights approach; where development embraces consideration of decent work, health care, adequate housing, levels of participation, and fair institutions of justice and a sense of personal security.

The new agenda recognizes that old boundaries between developed and developing countries are breaking down and new players from emerging and middle income economies are contributing to redefine the global economy. Growing poverty and inequalities in rich countries are blurring the distinctions between donor and beneficiary countries.

Migrants, minorities, indigenous people, women, children, persons with disabilities, vulnerable, excluded and marginalised groups require a specific, equitable, and rights-based development approach wherever they live, and governments and institutions in all countries and at all development stages have responsibilities in this regard.

As such, the universally agreed and universally applicable normative framework for Human Rights is more relevant than ever to global challenges of development.

It is now accepted that a post-2015 development agenda for development must be a global agenda, based on universal norms and universal objectives.

The Director of Studies, **Professor Marcel Brus**, said:

First of all I would also like to thank the South African branch of the ILA for the organisation of this conference. Having been a member of the organising team of the 2010 conference in The Hague, I know how much has to be arranged in order to get such a wonderful programme together and to make all the arrangements. Congratulations!

For those of you who are not acquainted with the work and the working methods of the ILA, let me briefly explain how the ILA works. The members of the ILA are convinced of the role international law has to play in orderly and peaceful international relations. For almost 150 years the organisation has engaged in studying international law and formulating proposals to improve it. The ILA international committees are the main instrument of this. In the committees, the national branches of the ILA are represented by experts in a particular field, like Human Rights, Law of the Sea or International Monetary Law. Together members of a committee study aspects of international law and develop proposals for improving international law. They report about their work at biennial conferences like this one and submit their proposals for adoption by the plenary meeting of the ILA members present. The discussion takes place in the open working sessions of the committees whereas the formal adoption of Resolutions is taken at the plenary closing meeting at the end of the conference. These resolutions will be widely distributed to relevant international bodies, like the United Nations or more specific organisations, in the hope and expectation that they will influence the formulation and implementation of international law.

Besides these committees the ILA has also established a number of Study Groups, that study particular issues in international law, but without the specific intention to formulate concrete proposals for implementation.

My role as Director of Studies is to organise and facilitate the work of the committees and study groups as best as possible, with the help of the staff of the ILA in its headquarters in London, Juliet Fussell and Natalie Pryer.

At this conference 23 out of our 24 committees and 8 Study Groups will be presenting their work to you. Their reports have been published on the website of the ILA and their members hope to engage with you in a critical discussion in

order to ensure that the ideas as finally presented reflect the opinions of the ILA as a whole rather than the opinion of the experts in the committee. On the final day of the conference I expect 6 committees to present their resolutions for adoption by the plenary meeting. All delegates are invited to participate in their discussion, but only ILA members have a right to vote about their approval. Substantive resolutions will be presented by the International Monetary Committee, the Cultural Heritage Committee, the International Commercial Arbitration Committee, the International Human Rights Committee and the Committee on the International Protection of Consumers. The text of the proposed resolutions will be available at the session, but are usually also contained in the report as posted on the website.

Should anyone have any questions about the organisational aspects of the work of the ILA, including about how to propose new topics for discussion in committees or study groups, please do not hesitate to contact me.

As in previous conference Summaries, the work of the committees will be briefly addressed. However it is not possible at this stage to summarise the debate at each open session¹:

Committees:

Space Law

The Space Law Committee presented its second report on dispute settlement, use of satellite data, space debris, suborbital flight and new developments. It consisted of two parts. Part 1, prepared and presented by Professor Maureen Williams, the committee chair, outlined central topics discussed by the committee members since the Washington DC conference in 2014 to date, namely dispute settlement, recent developments in the use of satellite data and other new developments including security in space and cyber security. Part 2, presented by Professor Stephan Hobe, the committee rapporteur, discussed the status of suborbital vehicles, registration issues, authorisation and the legal status of space tourists. There is still no accepted definition of suborbital flight and whether air law or space law, or both, are applicable has still to be decided. Suborbital activities are expected to evolve into a working market and space tourism will be complemented and possibly outdone by point-to-point transportation services. The Committee intends to elaborate further

¹ The debate will appear in summary form in the conference report when the editing exercise has been completed.

on the legal sides of suborbital flight and embark in the drafting of Guidelines for a Model Law on the matter. The Johannesburg working session also addressed asteroid mining issues in light of the US Commercial Space Launch Competitiveness Act signed on 25 November 2015 which establishes ‘the right of US citizens to engage in commercial explorations for, and commercial recovery of, space resources’. The USA is a party to, and depositary of, the 1967 Outer Space Treaty but is not a party to the 1979 Moon Agreement. The Outer Space Treaty has left open the question of the legal status of space natural resources confining Article II, on the principle of non-appropriation, to the moon and other celestial bodies with no reference to natural resources. The 1979 Moon Agreement, for its part, establishes that the moon and its resources are ‘the common heritage of mankind’ and is so far only binding on sixteen states.

Baselines under the International Law of the Sea

The committee on the Baselines under the International Law of the Sea presented its second report, which considered specific Articles under the UNCLOS III Treaty: Article 8(2) (the effect arising from the establishment of straight baselines within waters previously not considered internal waters and the consequences thereof for innocent passage); Article 10 (the method adopted by States of drawing straight baselines within a bay); Article 13 (the method adopted by States in relying upon low-tide elevations in the drawing of straight baselines, and the consistency of that practice with Article 7 (4) of the Convention); and Article 14 (how States rely upon a combination of methods in determining baselines). Of the particular articles analysed, the report scrutinises the relevant historical background, the textual context, State practice, relevant case law and commentaries by publicists, whenever available. The analysis of the individual articles included a number of conclusions drawn by the committee Article by Article. The report also addressed straight baselines and diplomatic protections, and listed in a table all the publicly available objections to straight baselines.

Use of Force

This committee concentrated upon various aspects of its mandate, which concerns the international law on the use of force (*ius ad bellum*). The report covered issues including clarification of the different *ius ad bellum* terms and concepts; a review of Article 2(4) of the Charter, which refers to force ‘against the territorial integrity or political independence of any state’; the definition of ‘armed attack’; and the definition of ‘aggression’. It also covered lawful uses of force such as force with Security Council authorisation, self-defence (with a consideration of necessity and

proportionality and of self-defence against Non-State actors), rescue of nationals abroad and Consent. The report also addressed particular issues such as Humanitarian Intervention, Cyber Operations and The Environment and Use of Force. The report concluded by emphasising the UN Charter's goal of collective peace and security and the dependence of that goal upon strict adherence to the international law on the use of force.

Global Health Law

The mandate of this committee has been to identify and confirm norms that are relevant to the promotion and protection of public health and to develop proposals for improving the existing legal and policy framework. There was a general consensus that the single most effective mechanism to improve the response to pandemic disease would be the strengthening of national health systems. Inadequate systemic attention is being directed to this area. The committee had met to discuss the global response to the Ebola outbreak of 2014-15 in West Africa and the work that needed to be done in order to improve the response to pandemic disease threats (Global Health Security Challenges). The committee considered the UN Secretary General's appointment of a High Level Panel on Access to Medicines (HLP); the legal issues surrounding access to essential medicines (including the WHO Essential Medicines Concept); and the proposed Framework Convention on Pharmaceutical Innovation. WHO is particularly suffering from a lack of adequate financial support for its drug regulatory unit, and faces a shortfall of personnel. This is a serious immediate concern. The report offered a detailed analysis and recommendations with respect to access to research materials; and a study of and suggestions for further exploration regarding key regulatory issues affecting the production and distribution of medicines, including trade-related aspects. The Committee members recognised the urgency of addressing issues involving the links between health and human rights law, issues concerning non-communicable diseases and obligations to protect the environment and address the health impact of climate change.

Human Rights Law

The committee's report (Part Two of an ongoing mandate) concerned the domestic implementation of judgments/decisions of courts and other international bodies

that involved international human rights law. Part One of the Final Report (the relationship of the International Court of Justice and human rights) was adopted at the Washington DC Conference in March 2014. The committee's overview of the subject affirmed the assumption that the human rights record of a state as a whole does not always coincide with openness of its courts with respect to human rights treaties. The report considered the obligation of state parties to comply with judgments or decisions of judicial or quasi-judicial (the term quasi-judicial bodies comprises 10 UN human rights treaty committees and the regional commissions of the inter-American and African systems) international bodies dealing with human rights; the contents of 'Good Faith' compliance and 'Good' or 'Best Practice.' The report then went on to review country based case studies. It made an important difference to which protection system a country belonged; and an important feature was the mode of engagement of domestic legal order with international law in general. The failure of some domestic courts to consider international practice may be due to a lack of information and possibly also to a lack of accessibility in terms of language. The committee prepared a substantive Resolution, which has been posted on the ILA website (<http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>)

International Protection of Consumers

The committee's mandate was to undertake studies on the international protection of consumers, with particular regard to e-commerce, tourism and consumer accidents. To that end the committee compared various national legislations on consumer protection and the standards they offered for the protection of non-national and non-resident consumers on their territories. They considered the possible extraterritorial reach of consumer legislation. The committee's primary aim was to look at how national legislation on the conflict of laws and jurisdiction, (as well as international treaties, model laws and regional legislation on consumer issues) dealt with the issue of consumer protection in a trans-boundary context. Having reviewed global, regional and national practice, the committee prepared a substantive Resolution, which has been posted on the ILA website (<http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>)

Non State Actors

This final report of the committee, together with its previous reports, responded to the urgent doctrinal need for an integrated and comprehensive assessment of the status of the Non State Actor (NSA) in international law. The international legal system has never been a closed regime in terms of its participants. It has gradually opened up to accommodate NSA's such as international organisations (e.g. the UN), certain civil organisations (e.g. the ICRC), armed opposition groups (e.g. the PLO) and individuals (mostly in the case of human rights law and international criminal law). The report asked the question: who are Non-State Actors? It then went on to classify NSAs; and examined the relationship between NSAs and international law. In Part IV of the report the committee offered alternative approaches to NSAs. The proposition was advanced that the role assigned to NSAs under international law is not objectively determined. The alternative approaches included Global Legal Pluralism, Transnational Law Approach, Constitutionalism, Policy-Oriented Approach and Interdisciplinary IL/IR Approach. A brief Resolution was adopted, which has been posted on the ILA website (<http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>)

Securities Regulation

This Twelfth report is the last in a line that has tracked progress in achieving coherent international derivatives regulations to govern a very global market. At least from the viewpoint of EU/US derivatives, 2016 was, so far, a banner year for regulatory harmonisation with regulators agreeing on central clearing counterparty (CCP) comparability standards and rolling out a more extensive 'substituted compliance' regime on a cross-border basis. There is some promise of truly global derivatives regulatory infrastructure. The report discussed Over The Counter (OTC) Derivatives and CCP Resilience, Recovery and Resolution initiatives which had preoccupied the markets in the years following the financial crisis. The committee found a high incidence of cooperation and communication among market players together with governments and regulators intent on demonstrating their adherence to perceived behavioural and structural norms. The EU Capital Markets Union proposal represents an important infrastructure development – the EU Commission has put forward a robust proposal to enhance Europe's relatively underdeveloped and fragmented capital markets. The committee also explored

insider dealing and corporate governance issues, using particular jurisdictions as proxies for discussion. The report was substantially finalised before the UK referendum on Brexit; and the implications in that regard are a topic for another day, given the seismic change for the EU.

Implementation of the Rights of Indigenous Peoples

The Mandate of the committee was to provide an in-depth study on the level of implementation of existing norms of international law (CIL, treaty law, or soft law). They had studied a range of cases in order to collect empirical material for providing a response to the question concerning the way in which and the extent to which international legal obligations on the rights of indigenous peoples are actually implemented at the domestic level. In addition to CIL and the UNDRIP, indigenous peoples' rights are affirmed and protected by ILO convention 69, which provides for a wide measure of cultural rights and labour rights for indigenous communities and their members. Various examples of state practice were provided by the committee. The practice of the IACtHR (Inter-American Court of Human Rights) was worth emphasising, especially as regards the interpretation provided by the court to Article 21 of the 1969 American Convention on Human Rights which covered the protection of land rights of indigenous peoples over their ancestral territories. Human rights standards concerning indigenous peoples are: the right to self-determination; the right to autonomy or self-government; the right to cultural identity; the right to establish their own educational institutions and media, as well as to provide education to indigenous children in their traditional languages and according to their own traditions; and the right to reparation and redress. Indigenous peoples cannot be considered in isolation from each other, because their rights are strictly interrelated with each other and to the indigenous peoples' identity, to the extent that the change of one of its elements affects the whole. The mandate of the committee will expire in 2018. Until then the committee will examine further its various case studies, select other cases of interest, prepare recommendations involving the private sector, select best practices relating to countries that have aimed/are aiming to have UNDRIP standards, define strategies, and develop strategies and recommendations for removing/preventing violations of indigenous peoples' rights by States.

Nuclear Weapons, Non-Proliferation and Contemporary International Law

The committee was mandated to ‘consider competing legal approaches to non-proliferation and regulating nuclear weapons within the contemporary context.’ The committee was ‘amidst a process of assessing the three pillars of the 1968 Nuclear Non-Proliferation Treaty (NPT)’ – i.e. non-proliferation of nuclear weapons; the right to develop research, production and use of nuclear energy for peaceful purposes; and nuclear disarmament. This Third Report of the committee was devoted to Legal Issues of Verification of Nuclear Non-Proliferation Commitments. The first four parts of the report analysed legal issues related to different nuclear verification regimes and their associated organisations: Part I, the International Atomic Energy Agency (IAEA); Parts II, III, and IV, the European Atomic Energy Community (EURATOM), the Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC) and the Comprehensive Nuclear-Test-Ban Treaty Organisation (CTBTO) respectively. Part V evaluated interdependencies between legal obligations and best practices as an essential element of the nuclear non-proliferation regime. Part VI concerned the way ahead for the work of the committee. Conclusions were drawn by summarising relevant findings, identifying open issues, developing recommendations, and recording draft elements of the envisaged ILA declaration. The Annex to the report comprised a set of Tentative Conclusions and Recommendations relating to the three pillars of the 1968 NPT and ‘Compliance with and Enforcement of Nuclear Non-Proliferation Commitments.’

Intellectual Property & Private International Law

The committee examined the current state of affairs relating to the protection of IP in the transnational sphere. During the final stage of its mandate the committee aims to conclude its work by finalising the guidelines on the remaining controversial issues and preparing a publication (i.e. a commentary on the guidelines). It also intends to map the direction in which the development of the legal framework for the transnational exploitation of IP rights should head. The report consisted of the draft guidelines and an activities report. As for the activities report, the committee had a joint meeting with WIPO in January 2015 in Geneva; and a presentation was also given by the two rapporteurs of the ALI principles on IP and on the Japan-Korea principles on private international law on IP rights. One of the controversial issues in the field of choice of law was initial ownership. With

regard to registered IP rights, the committee was likely to adopt the *lex loci protectionis* rule to determine entitlement and ownership of registered IP rights. It was widely agreed that some sort of guidelines for the future with regard to the settlement of IP disputes in arbitration proceedings would be desirable. Among the matters discussed within the arbitration subcommittee were the arbitrability of IP-related matters. Arbitrability might be resolved by way of applying the law of the place of arbitration, but this remained controversial. The committee needs further to decide upon the scope of and the draft preamble to the guidelines. The committee will also have to crystallise the notion of IP rights and specify what other areas of law should fall within the scope of the guidelines. At the final stage of its work, the committee will also have to make a decision whether to introduce special provisions concerning unitary IP rights, consumer protection and the law governing securities. The committee aims to contribute to creating a more transparent legal framework for the appropriation and exploitation of ideas. The committee will have to finalise the guidelines and seek comments from the public; and it will have to continue working with partner organisations and institutions in order to spread the information about the existence of the ILA guidelines.

Cultural Heritage Law

The report offered a comprehensive typology of ‘cultural landscapes significant to indigenous peoples.’ This typology was defined by categories that merged natural and cultural phenomena in distinctive ways. It considered applicable law: treaties (specific and general international instruments; regional instruments), soft law instruments, general principles of law, the influence of the needs for sustainable development; and it took some examples from national law. Careful risk management could help protect the cultural landscape of significance to indigenous peoples in several ways. The interests of indigenous peoples rested on a qualified right to self-determination. The UN declaration on the rights of indigenous peoples (UNDRIP) was crucial even as soft law. There was a need for an improved typology of cultural landscapes as well as the essential concept of place among many indigenous peoples. Five categories were provided to help structure a transnational legal regime pertaining to cultural landscapes of significance to indigenous peoples: (i) Pure natural landscapes and seascapes of indigenous cultural significance; (ii) Natural landscapes created by indigenous peoples; (iii) built or constructed landscapes such as villages whose layout or structure is of

cultural significance; (iv) cultural imagery that projects cultural statements on a natural landscape; and (v) intangible landscapes characterised as landscapes of the mind. The committee prepared a substantive Resolution, which has been posted on the ILA website (<http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>).

Monetary Law

The committee (known as MOCOMILA) prepared a report which included seven discrete topics: (i) an early history of MOCOMILA; (ii) the ethics of finance: a progress report; (iii) decided cases in London and New York; (iv) the operation of the European Banking Union: Institutional Developments; (v) Payments Recent Developments: Virtual Currencies; (vi) the East African Community Monetary Union; and (vii) Crowdfunding in International and National Regulatory Frameworks. Particular points included the new focus on ethics in finance in the aftermath of the financial crisis, coupled with the recognition of the loss of trust in the sector; and the momentum for a movement to restore trust. Each of the other subjects was analysed in detail. It is not thought necessary at this stage to summarise each of the seven areas of discussion. The committee prepared a substantive Resolution, which has been posted on the ILA website (<http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>).

Sea Level Rise

The mandate of the committee is in two parts: (i) to study the possible impacts of sea-level rise and the implications under international law of the partial and complete inundation of state territory, or depopulation thereof, in particular of small island and low-lying states; and (ii) to develop proposals for the progressive development of international law in relation to the possible loss of all or of parts of state territory and maritime zones due to sea-level rise, including the impacts on statehood, nationality and human rights. The committee studied the scientific evidence, in particular the findings of the Intergovernmental Panel on Climate Change (IPCC) concerning the trends in sea-level rise and the projections for the future. There has been progress in the understanding of on-going sea level change and improvements in projections of future sea level rise. The Fifth Assessment Report (AR5) of 2013/14 shows an upper end prediction of 98cm, although

significant uncertainties remain. The committee divided its work thematically into two main stages. The first stage involved two parallel streams of study: one on the law of the sea issues, and the other on the migration and human rights issues. The second stage would then involve the study of the statehood question and other issues of international law and broader issues of international security. The present report addressed sea-level rise and maritime zones; the existing law of the 'Normal' Baseline; the effects of Coastline Changes on Maritime Boundaries; and Migration and Human Rights issues. Consideration was given to Disaster Risk reduction and Climate Change Adaptation and to the need to respond to movement, displacement, migration and planned relocation.

Complementarity in International law

For a variety of complex reasons, states often fail to discharge their legal duties to investigate or prosecute atrocity crimes, such as genocide, crimes against humanity and war crimes. This leaves an impunity gap under which those most responsible for some of the world's worst crimes go unpunished ('the rampant problem of impunity'). Concern about this state of affairs led to the negotiation and adoption of the Rome Statute for the establishment of the International Criminal Court (ICC) in 1998. The committee's focus is primarily on establishing modalities for the investigation and prosecution of ICC crimes through national systems. The committee set about an initial exploration of the practical impact on the national level of the complementarity principle for some of the ICC State parties. The intention is to begin mapping the practice of some State Parties presently within the ICC scope in relation to the investigation and prosecution of crimes against humanity, genocide and war crimes under the notion of complementarity. The mere existence of the ICC and the entry into force of the Rome Statute seems to have generated some interest in the passage of domestic legislation to incorporate some of the Rome Statute crimes within national law.

Three reports, each prepared by committee members, implied that the existence of domestic legislation is only the first step towards accountability. There may be legal hurdles that will have to be overcome, including both de facto and de jure immunities and amnesties, all of which could operate effectively to block prosecutions of powerful persons or to shield those close to them. Internationally supported attempts may lead to the putting into place domestic institutions to

address gross human rights violations. However, what needs to be overcome is the lack of political will in this field.

Commercial Arbitration

The committee was mandated to study the topic of the inherent powers of arbitrators in international commercial arbitration. The committee felt it appropriate also to consider the notion of implied powers and its relation to inherent authority. That led to the wording of the Resolution expressly conferring upon arbitral tribunals ‘powers that are inherent and implied.’ The committee had before it the report initially presented to the 2014 conference in Washington (already published in the Washington Conference Report, page 822). The Johannesburg conference adopted the Resolution to be found at <http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>.

Feminism and International Law

There were two objectives of this report: to explore the contribution of international law to structural change; and to establish to what extent there has been a realisation of the individual rights arising from the positive obligations of States parties. Two sub-themes of the report were (a) women in power and in decision-making and (b) gender responsive budgeting. As for (a) (women in power and in decision-making), women’s voices and their needs and views do not have a full expression in practice; education is vital for empowerment (on a personal level, and the level of the broader community); and women’s input on different levels of decision-making (e.g. education, environment-climate change) must be provided for in the interest of all. As for (b) (gender responsive budgeting), UNIFEM has been involved in the development and definition of this concept. The most effective approach would be to institutionalise the GRB approach in the budgetary process in the same form or stage in the process. GRB is seen as one tool among many available to policy makers to tackle inequality. Budgetary provisions for women’s economic empowerment were often lacking in the budgets even of States which had ratified CEDAW (national examples are India, Ireland and Sweden). The committee considered the definitions of: women’s economic empowerment; women in power; and gender responsive budgeting. The report discussed State practices and international and regional instruments available, and

other initiatives (e.g. Beijing Platform for action, Sustainable development goals). The most relevant international (as opposed to regional) influence for this topic was CEDAW, in addition to BPfA and ICESCR. Only 33% of the 9 countries discussed in the report met the 30% critical mass threshold for female members of their national parliaments. The committee concluded: In relation to structural change, one of the important changes would be the establishment of ‘Women’s Machinery’ in whatever form, and to contribute to the embedding gender issues in the public and official discourse. There should be increased female participation in decision-making, and some developments in relation to budgeting.

Islamic Law & International Law Committee (09h00 – 13h00)

The sub-heading of this report was: ‘Islamic Law and Freedom of Expression: Challenges and Prospects.’ The report reviewed the nature of the Islamic Legal System, which most Muslim scholars consider as a divine and sacred legal system. However Islamic jurisprudence (or *Fiqh*) is not sacred. While the Qur’an consists of approximately 6,600 verses, less than ten percent of the Qur’anic verses are concerned with both religious and legal duties of Muslims. This means that in the modern world, while certain principles of family law, inheritance law, contract and criminal law may be based on primary sources of Islamic law, many other new or emerging areas of law such as corporations law, commercial law, environmental law, administrative law, immigration law are regulated by states and parliaments in Muslim countries. A review of Islamic law literature proves that Islamic law can accommodate modern international and national legal principles which are developed based on human experience and rational principles. The committee considered the following topics: The Rule of Law and Islamic Law; Freedom of Expression in Islamic Jurisprudence; Domestic Blasphemy Laws and Politicisation of Debates around Defamation of Religions; Expression and Anti-Blasphemy Laws; Expression and the Prohibition of defamation of Religions; the Islamic Regional Human Rights Model; the Right to Freedom of Belief, Thought and Speech. The conclusion was that a majority of Muslim states had largely accepted the provisions of Articles 19 and 20 of the International Covenant on Civil and Political Rights (1966); and they generally adhered to the accepted norm on freedom of expression. Controversial issues included aspects of public morality, public order and national security.

Other Subjects

Protection of Privacy in Private International and Procedural Law

Rule of Law & Investment Law

The role of International Law in Sustainable Natural Resources Management for Development

Recognition/ Non-Recognition in International Law

No reports were submitted on these subjects.

Study Groups and Panel Discussions

There was a wide-ranging selection of legal topics in the various study groups and Panel Discussions. In this Summary, the topics will simply be noted as follows:

Content and Evolution of the Rules of Interpretation

Business & Human Rights

Principles of the Engagement of Domestic Courts with International Law

International Criminal Law

Africa's Illegal Capital Flight

Teaching of International Law

A Critical Assessment of International Commercial Law Harmonisation Efforts

Transitional Justice: In Conversation with Albie Sachs

Nuclear Security : Problems and Prospects

New Developments in Mediating Investor State Relations

Sustainable Development & the Green Economy in International Trade Law

Due Diligence in International Law

International Law and the Peace & Security Architecture of the AU

ICC Sponsored Arbitration Panel

The Law of Armed Conflict

BRICS in International Law

Marine Bio-Diversity beyond areas of National Jurisdiction

Use of Domestic Law Principles for the Development of International Law

Sustainable National Resources Management in International Law

Preferential Trade Agreements

Coming to a Theatre Near You – Robots that Kill

The Conduct of Hostilities under International Humanitarian Law

Sovereign Bankruptcy

Socially Responsible Investment

UN Sanctions Law and International Law

The ILA Scholarship Scheme:

As noted by Lord Mance (see above), this was the first Biennial Conference at which a full scholarship scheme was available.

The ILA Scholarship scheme was the initiative of Catherine Kessedjian. It was first deployed at the regional conference in Lisbon in 2015.

The scheme was then applied again for the 77th Conference in Johannesburg. Willem van Genugten chaired the fund-raising side (he also devised a Dutch scholarship scheme uniquely for the Johannesburg conference). Bruce Mauleverer chaired the ILA selection committee.

On the ILA's website there were the following statements about the ILA Scholarship Scheme.

‘AIM: The ILA has established a Scholarship Fund to help graduate & postgraduate students and early career professionals attend ILA Regional or Biennial Conferences.

The countries represented were: Portugal, Slovenia/Macedonia; China; Armenia; Mexico; Kenya (2); Poland; South Africa; Zambia; and Vietnam.

A further matching group of 9 scholarships were made available by the generosity of Mr Van Genugten's family, friends and colleagues in conjunction with the

Dutch Ministry of Foreign Affairs, and Tilborg University in the Netherlands and North-West University, SA. The scholars came from Namibia; Ethiopia; Uganda (2); South Africa (4); and Zimbabwe.

Each of the scholars provided feedback about their experiences at the conference. One wrote:

'The conference served as a platform for academics, public policy makers and legal practitioners to examine whether the current development in the interpretation and application of international law reflected a North-South divide. It was my first time to participate in such a global conference. I had been exposed to the most dynamic and extensive international law event with a vigorous environment in an incredible week. The Committee meetings, the Study Group meetings, the Panel Discussion and the special event for young scholars organised by CIGI provided me with a unique opportunity to learn public and private international law by connecting cutting-edge classroom theory to real-world, real-time State practice and development. Discussing international law with the most eminent figures and young scholars from all over the world doubtlessly refined my legal thinking and stimulated my academic inspiration.'

Another scholar wrote:

'It was such a privilege for me to participate in the 77th Biennial Conference of the International Law Association. That informative and interesting week benefited me not only with practical legal knowledge but also with the networking of global law scholars. engaging in and exchanging views with distinguished professors and brilliant young scholars around the world were incredible experiences for me during the Conference. From the talks on coffee breaks and meal times, we, the young scholars at the conference, nurtured the idea of establishing a platform for us to share ideas, knowledge and jobs as well as research opportunities. More ambitiously, we wanted to promote the work of ILA to more students and young people like us to enlarge the networking of ILA. ... I was very grateful for an opportunity to participate in such a vigorous event.'

A third scholar wrote:

'As one of the twenty fortunate scholars chosen to attend, it was truly an honour to be among an illustrious group of legal minds. The hospitality and generosity of not only the organizing committee, but also the delegates was extraordinary. I was further impressed by the calibre of young scholars chosen and representing 17 countries from the African, Asian and European continents. In addition to this,

there was a large number of delegates in attendance, which is a testament to the global appeal of the work done by the ILA and the efficiency of the organising committee.

'The closing ceremony on the fourth day (Thursday 11 August) provided a summary of the week's activities. The highlight of the closing ceremony was the issuing of certificates to the scholarship recipients. Additionally, the head of the Australian branch gave a presentation on what to expect at the next ILA conference in Sydney.'

The Conference Reporters

There were 32 conference reporters, who attended the working sessions, recorded the debates, collected manuscript interventions and wrote up reports of the work of their sessions. The quality of what they achieved was outstandingly good.

Closing Ceremony:

The Closing Ceremony illustrated what a full – even packed – programme had been delivered at the conference. As **Professor Marcel Brus** pointed out, there had been 23 Committee sessions, 8 Study Groups and 1 Interest Group.

6 International Committees had passed resolutions: (<http://www.ila-hq.org/en/news/index.cfm/nid/08039ADC-FF64-4E58-8400C6F015DAD404>); and for the first time Study Groups had also passed Resolutions. 6 Committees would be dissolved and 2 were completing their reports.

Professor Brus expressed his satisfaction with the work of the ILA at this conference. However, he emphasised that reports should be prepared well in advance of the conference. It was important to maintain the quality of the work of the ILA, in order that its reputation and authority might be maintained.

He expressed his thanks to the 32 Reporters who had done such sterling work at the conference.

The Resolutions were then formally adopted.

Lord Mance thanked everyone for attending the Conference. He then awarded certificates to each of the 20 scholars. He thanked them for attending; paid tribute to their enthusiasm; and said that he looked forward to a fruitful continuing

collaboration with them. He hoped that a form of network could be established where modern social media would be used by scholars and other lawyers. He said that any such network would have to be consistent with the structure of the Association. He said that members of the network should become members of branches of the ILA. Such a network would be consistent with the ILA's fundamental aim of rejuvenation.

He said that two Vice-Chairs were retiring at the end of their terms of office.

He mooted the tentative idea of a permanent Steering Committee with responsibility for quality control of the work of the ILA and its committees.

Professor Shunji Yanai spoke of the South African Constitutional Court, which housed a remarkable art collection. Its central theme was Art and Justice. He said that the conference had been one of friendship, conviviality, and collegiality. It was therefore not just a group of academics getting together. He said that we were all striving towards peaceful co-operation worldwide. He gave a vote of thanks to the host branch.

Christopher Ward, whose Australian Branch will be hosting the next conference in Sydney, also gave a vote of thanks. He said it had been a marvellous conference. He said that the Sydney conference would take place between 20 – 24 August 2018.

This conference had been a vibrant one: it was a conference to remember. It had been difficult to organise. There had been much generosity and kindness from our South African hosts. They had been friendly and willing to help. The academic content of the conference work had been superb. Professor Strydom and his team had set a high bar. The Australians would aim to set a high standard in Sydney – where he hoped to welcome everyone in two years' time.

Professor Strydom spoke of the acts of solidarity and collaboration that had taken place during the week. He expressed gratitude for the amount of support he had received. Some 400 delegates had come together and worked together. There had been multiple acts of support. He thanked Alex Kunzelman and his team of Reporters. He thanked Juliet Fussell and Natalie Pryer.

Lord Mance then declared the conference closed.

That evening delegates enjoyed a final Gala Dinner before returning to their homes.

Conclusion:

On any view this was one of the ILA's most successful and interesting conferences. Although the numbers of delegates was rather less than at some other conferences, the quality of the documentation and of the debate at the various sessions was very high.

Hennie Strydom and his team deserve to be congratulated upon a job well done. This conference will be remembered for many years.

Bruce Mauleverer

October 2016