

***INTERNATIONAL CRIMINAL LAW COMMITTEE
NEWSLETTER***



*AMERICAN BAR ASSOCIATION
SECTION OF INTERNATIONAL LAW AND PRACTICE*

**VOLUME I, ISSUE 2
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Newsletter Editor: Jason McClurg, Esq., Berliner Corcoran & Rowe LLP with help from Bruce Zagaris, Committee co-chair.

I. U.S. INSTITUTE OF PEACE UNVEILS NEW NETWORK

Mike Dziedzic, U.S. Institute of Peace, has sent us details of a proposed new international network to promote the rule of law.

Statement of Purpose

International Network to Promote the Rule of Law (INPROL)

The International Network to Promote the Rule of Law would propose to bring together experienced international practitioners in all disciplines related to rule of law. Participants in the Network might include judges, prosecutors, defense attorneys, civilian police, military police, military lawyers, border police, corrections officials, legal advisors and judicial administrators, human rights advisors and monitors, and prominent experts in these areas. With the purpose in mind of developing the human capacity and intellectual resources required to promote the rule of law effectively during internationally mandated peace missions, INPROL, with support from the US Institute of Peace, proposes to pursue the following activities:

Phase I

- Establishing an Internet-based network connecting international practitioners engaged in promoting the rule of law in all current field missions with their counterparts who have served previously;
- Developing a database of planning guides, assessment checklists, operating procedures, regulations, legal codes, policies, and other documents that have been developed during UN, EU, OSCE, AU and other international missions;
- Facilitating the response to requests for assistance from personnel currently serving on UN, EU, OSCE, AU and other international missions by creating online forums so that lessons learned elsewhere can be applied in missions currently unfolding;

Phase II

- Conducting periodic surveys to identify education and training requirements for the entire spectrum of positions related to the rule of law to enhance the preparation of personnel who will serve on future missions;
- Coordinating with appropriate institutional partners to develop new and enhance existing education & training programs relating to rule of law;
- Collaborating with partners to maintain a database of rule of law courses;
- Collecting commentaries and recommendations from practitioners who drafted or implemented documents contained in the database of vital mission documents;

Phase III

- Serving as a clearinghouse for information about openings in international missions for personnel with rule of law specialties;
- Developing the capacity to support long-term institutionalization of the rule of law by using the Network to continue supporting the individuals who have been trained, mentored, and otherwise assisted by international peace missions;
- Collaborating with the UN, EU, OSCE, the AU and other institutional partners to organize workshops, seminars, and events to promote the understanding of practices, programs, and processes required to institutionalize the rule of law.

Persons interested in more information should contact Mike Dzedzic, U.S. Institute of Peace, at mdzedzic@usip.org.

II. NEWS OF MEMBERS

Christopher C. Burris, King & Spalding LLP, Atlanta, recently published an article on the concurrent jurisdiction of Federal District Courts, Courts-Martial, and Military Commissions to try violations of the laws of war. The title is "Time for Congressional Action: The Necessity of Delineating the Jurisdictional Responsibilities of Federal District Courts, Courts-Martial, and Military Commissions to Try Violations of the Laws of War." The article is being published by the Federal Courts Law Review (<http://www.fclr.org/2005fedctslrev4.htm>).

Professor Ellen S. Podgor, has authored *Cybercrime: National, Transnational, or International?* 50 WAYNE L.R. 97-108 (2004).

Bruce Zagaris represented the International Penal Law Association's (IPLA or AIDP by its French acronym) American Section at the IPLA board meeting at the Palais de Justice in Paris on June 3-4, 2005. See the resolution in Sec. VI below. He participated in the IBA 8th Transnational Crime conference (see Sec. V below).

III. SEMINAR PROPOSAL

The Rule of Law and Democracy Unit of the Office of the High Commissioner for Human Rights (OHCHR) is organizing a seminar to bring together staff of OHCHR field offices, UN agencies and expert national practitioners to strengthen the implementation of international human rights standards in counter-terrorism measures taken at the national level.

The Rule of Law and Democracy Unit works to enhance the implementation of international standards by increasing awareness of them amongst national judges, lawyers, human rights defenders and similar professions. One of the Unit's current priorities is the protection of human rights in the context of counter-terrorism.

A seminar has been proposed that will discuss relevant recent experiences and lessons learned in putting counter-terrorism issues before national courts and other human rights bodies. The primary goal is to clarify in practical terms international human rights standards and jurisprudence in order to facilitate their use in counter-terrorism matters at the national level. Emphasis will be placed on recent advocacy experiences, best practices and lessons learned by judges, lawyers and human rights defenders. Participants will also include members and representatives of international and regional human rights organizations, States and NGO observers.

A specific date and location for the seminar has not yet been determined.

IV. COMMITTEE RECOMMENDATION AND REPORT

The Committee has proposed a recommendation and report urging the United States Department of Treasury to promulgate regulations to govern the use of international tax information exchange agreements and income tax treaties; and recommending that these regulations should contain provisions which mandate that U.S. taxpayers be notified when a foreign government requests their private financial information for tax purposes and which provide U.S. taxpayers the opportunity to object to the sharing of that information. Persons wanting the full draft recommendation and report should contact bzagaris@bcr-dc.com. The recommendation and report were prepared by Chris Burris, Esq., of King & Spalding LLP, Atlanta, and Bruce Zagaris, co-chair of the Committee.

The Councils of the Section of International Law and Criminal Justice Sections considered the recommendation and report at the upcoming annual meeting of the American Bar Association on August 5-6, 2005. Due to opposition of the U.S. Treasury and some substantive and technical issues, the recommendation was withdrawn and is being reconsidered pending further examination. The Section of Taxation is considering the report, but still at a Committee level at present. Persons interested in participating in considering the report should contact Mr. Zagaris.

V. IBA 8TH TRANSNATIONAL CRIME CONFERENCE

On June 23-25, 2005, the International Bar Association held its 8th Transnational Crime Conference at Starhotel Rosa, Milan, Italy. During the evening of June 23 the program started with a reception. The main topics were on Friday June 24 'Fruits of the Poisoned Tree' - The Admission of Illegally Obtained Evidence in Criminal Proceedings Post 9/11; and Corporate Responsibility for Corporate Crime - The Parlamat Experience and Beyond. On Saturday morning June 25 the sessions concerned: Vulnerable Witnesses: Witness Protection Programs and Fair Trial Rights. The luncheon speaker was Professor Fausto Pocar, State University of Milan and Vice-president, International Criminal Tribunal for the former Yugoslavia. On

Saturday afternoon the session concerned 'There's a New Sheriff in Town' - the Extra-Territorial Reach of US Courts and Regulators. On Saturday evening there was a dinner.

The following papers were delivered: Use of Information Obtained by Torture and the Reaction of the English Courts by David Corker, Corker Binning, London (14 pp.); Combating Al Qaeda Terrorism: Aspects of Judicial Cooperation by Mr. Stefano Dambruoso (11 pp.); Dancing With the Scavenger's Daughter: Torture, Rendition, and the United States by James Park Taylor, Tribal Defenders Office, The Confederation of Salish and Kootenai Tribes of the Flathead Reservation, Pablo, Montana (37 pp.); Ennio Amodio, How to Prevent Crime Inside Companies: Corporate Liability and Compliance Programs Under the Italian Law (9 pp.); Ennio Amodio, The Accusatorial System Lost and Regained: Reforming Criminal Procedure in Italy, reprinted from the Am. J. Of Comparative Law (2004) (11 pp.); The Impact of Corporate Criminal Liability on Financial Institutions by Paul Gully-Hart, Schellenberg Wittmer, Geneva, Switzerland (13 pp.); The Accomplice as a Prosecution Witness by Michael O'Kane, Peters and Peters, London; Protection for Vulnerable Witnesses and Fair Trial Rights without author (8 pp.); The Jay Treaty of 1794 and an Historical Perspective on the Extra-Territorial Relationship between US and Europe by Brian Spiro, BCL Burton Copeland, London (12 pp.); The Practical Application of Convention Rights in the UK Extradition Process by Hugo Keith, London (21 pp.); Corporate Responsibility for Corporate Crime by Dr. Kai Hart-Hoenig, Wiesbaden, Germany; Obtaining Evidence from the US by Bernard S. Bailor, Caplin & Drysdale, Chartered, Washington, D.C. and Justin A. Thornton, Law Offices of Justin Thornton (29 pp.); Corporate Criminal Liability - The Parlamat Experience and Beyond by Rod Fletcher, Russell Jones and Walker, London (12 pp.); and "There's a New Sheriff in Town" - The Extra-territorial Reach of US Courts and Regulators" by Peter Binning, Corker Binning, London (12 pp.); and Bruce Zagaris, "The Extraterritorial Reach of U.S. Courts and Regulators: How Defense Counsel Can Make Complex Prosecutions Fairer" (26 pp.).

These papers were available by CD Rom.

The Committee of the IBA that organized the conference will hold seminars during the IBA Annual Meeting in Prague, Sept. 25-30, 2005. One of the programs will be on international tax enforcement. More information is available through the IBA website (<http://www.ibanet.org>).

VI. NEW COMMITTEE LEADERSHIP

The following persons have been appointed to the Committee on International Criminal Law leadership:

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V. JOURNAL OF NATIONAL SECURITY LAW & POLICY

The University of the Pacific, McGeorge School of Law has started a JOURNAL OF NATIONAL SECURITY LAW & POLICY. Dean Elizabeth Rindskopf Parker, the former general counsel of the Central Intelligence Agency and a member of the SILP, explained in the inaugural issue the purpose of the journal.

First, the U.S. domestic legal community and the legal system they interpret and protect have not been well prepared for the dangerous times in which we live. The domestic legal community has viewed national security policy and law beyond its purview and has not recognized its ability to provide orderly solutions in a newly-disordered world. Second, members of the U.S. community of national security experts have not been students of the U.S. constitutional and legal structures and systems. Such experts have not been well prepared to identify and implement national security solutions that give appropriate weight either to international law or to constitutional and domestic legal considerations.

A need exists for discussion and debate, to understand the national security problems the U.S. confronts and then to identify solutions to these issues that are true to the spirit of the legal system the U.S. cherishes.

The JOURNAL seeks to provide a forum for the exchange of views between academics and practitioners as they search for the best ways to achieve the two values fundamental to the U.S. system of government and to the world's future, law and security.

Many of the contributors to the first issue of the JOURNAL are members of the American bar Association's Standing Committee on Law and National Security. The authors and articles are: Dean Elizabeth Rindskopf, *Why a Journal of National Security Law & Policy*; Norman Abrams, *The Material Support Terrorism Offenses: Perspectives Derived from the Early Model Penal Code*; Michael J. Woods, *Counterintelligence and Access to Transactional Records: A Practical History of USA PATRIOT Act Section 215*; Erwin Chemerinsky, *Enemy Combatants and Separation of Powers*; Malvina Halberstam, *Alvarez-Machain II: The Supreme Court's Reliance on the Non-Self-Executing Declaration in the Senate Resolution Giving Advice and Consent to the International Covenant on civil and Political Rights*; Leslie Gielow Jacobs, *A Troubling Equation in Contracts for Government Funded Scientific Research: "Sensitive But unclassified" = Secret But unconstitutional*; Scott L. Silliman, *Teaching National Security Law*.

VI. AIDP URGES UN TO REINSTATE MANDATE OF HUMAN RIGHTS EXPERT IN AFGHANISTAN

On June 4, 2005, the board of the International Association of Penal Law (known more by its French name Association Internationale de Droit Penal or its French acronym AIDP), meeting at the Palais de Justice in Paris, adopted a resolution concerning the independent expert on human rights in Afghanistan.

The resolution notes that his report to the United Nations Commission on Human Rights (E/CN.4/2005/122), contains specific recommendations towards ensuring respect for the rights

of prisoners and the prohibition of torture as well as a functioning of the criminal justice system as a whole.¹

The resolution points out that the AIDP is alarmed over the grave human rights circumstances in Afghanistan and the lack of proper implementation of the penal and criminal procedure laws. As a result, the AIDP deplores that the UN Commission on Human Rights has terminated the mandate of the independent expert on human rights in Afghanistan.

The board of Directors of the Association urges the United Nations, especially the UN Commission on Human Rights, to reconsider this decision and reinstate the mandate of Professor Cherif Bassiouni as independent expert in order to promote the rule of law and ensure respect for human rights in the difficult political context of the country.

Within the framework of the UN peace-keeping operations under the leadership of UNAMA, the resolution notes it is critical that the reform of the various components of the Afghani administration of justice fully take into account the recommendations of the independent expert. In this regard, the resolution explains the independent expert should continue to assist the Government of Afghanistan and UNAMA. Additionally, the UN High Commission of Human Rights, the resolution states, should actively pursue these objectives in her activities in the country. The independent expert should review the Afghani efforts to comply with international human rights standards.

Already another non-governmental organization, the Afghan Human Rights Commission, has asked the UN to ensure proper monitoring of human rights situation after it fired the independent expert. (Reprinted by permission from the 21 INT'L ENFORCEMENT L. REP. 18 (Aug. 2005).

VII. ACTIVITIES OF THE U.S. BRANCH OF THE INT'L PENAL LAW ASSOCIATION

The U.S. Branch of the AIDP's Section's 2005 annual conference, again will be hosted at Case Western Reserve University School of Law, is titled "Torture and the War on Terror." The Conference will feature panels on "Outsourcing Torture and Extraordinary Rendition," "The White House Torture Memos: A Debate," "Suppressing Torture: The Role of International Law and Organizations," "Adjudicating Torture in American Courts," and a panel of philosophers and historians titled "What's Wrong with Torture?" The Section's 2005 Book and Article of the Year Awards will be given out at the "Torture and the War on Terror" Conference, which is scheduled for October 7, 2005. For more information contact: Michael P. Scharf, Professor of Law and Director Frederick K. Cox International Law Center Case Western Reserve University School of Law, 11075 East Blvd., Cleveland, Ohio 44106-7148, Phone: (216) 368-3299, Fax: (216) 368-2086, michael.scharf@case.edu.

VIII. YEAR IN REVIEW ARTICLE

¹ For background on the report of the independent expert and his firing, see Jason McClurg, *Top Human Rights Investigator Fired after Critical Report Published on Coalition Activities in Afghanistan*, INTERNATIONAL ENFORCEMENT L. REP. 232 (June 2005).

The Committee has prepared an article on year-in-review developments which Mark Wojcik, Committee co-chair has led.

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