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2006 Annual Meeting Schedule

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Wednesday, March 29

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8:15 am–1:30 pm

The Iran-U.S. Claims Tribunal at 25: The Cases Everyone Needs to Know for Investor-State & International Arbitration

Cosponsored by the Institute for Transnational Arbitration's Academic Council

With 25 years of experience and a jurisprudence consisting of over 800 decisions and awards, the Iran-United States Claims Tribunal exerts an increasing influence on investor-state and other international arbitrations. In particular, one finds a growing number of citations in briefs and arbitral decisions to the Tribunal's precedents on jurisdiction, evidentiary practices, interim measures, contract claims, expropriation, valuation, and damages. This conference will examine the cases that everyone needs to know: those with the greatest impact on, and most enduring relevance to, contemporary disputes. Please join a stellar faculty in examining these issues.

Conference Co-chairs: Christopher R. Drahozal, University of Kansas School of Law
Christopher S. Gibson, Suffolk University School of Law

Separate registration required -- for further information and to register, visit http://www.cailaw.org/ita/ASIL_06.html

9:00 am–3:30 pm

ASIL Executive Council Meeting

4:30 pm–5:30 pm

Welcome by ASIL President James H. Carter

Moderator: Gwen Ifill, Moderator and Managing Editor of "Washington Week" and Senior Correspondent for "The NewsHour with Jim Lehrer"

A Conversation with Secretary of State Condoleezza Rice

On the occasion of the ASIL 100th Annual Meeting, the Secretary of State will open the

On the occasion of the ASIL 100th Annual Meeting, the Secretary of State will open the meeting with a special program. A panel of conversationalists including Retired Justice Sandra Day O'Connor, U.S. Supreme Court, Judge Rosalyn Higgins, International Court of Justice, and ASIL President-Elect José Alvarez, Columbia University, will join the Secretary.

5:45 pm–6:45 pm

ASIL Academic Partner Program

Eighth Grotius Lecture

Program Introduction: Professor Daniel Bradlow, Director of International Legal Studies, American University, Washington College of Law

Lecturer: Professor B.S. Chimni, Vice-Chancellor, The WB National University of Juridical Sciences, Kolkata, India--"A Just World Under Law: A View from the South"

Commentator: Professor Philip Alston, New York University School of Law

6:45 pm–8:00 pm

Grotius Reception

This event is made possible in part through the contributions of ASIL Centennial Partners Debevoise & Plimpton LLP, Sullivan & Cromwell LLP, White & Case LLP and ASIL Academic Partner American University Washington College of Law.

7:30 pm–10:00 pm

AJIL Board of Editors Dinner

Thursday, March 30

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7:45 am–8:45 am

Interest Group Business Meetings

- Africa Interest Group

9:00 am–10:30 am

Trade, Investment and the Environment: Closed Boxes?

Trade and foreign investment protection rules seem to be at odds with international environmental norms. How should international law deal with the co-existence and interpretation of these different groups of norms: as a mere matter of conflict or not, or rather in terms of mutual respect? Is the notion of sustainable development of any help? Are dichotomies such as universality v. fragmentation and *lex generalis* v. *lex specialis* still valid categories or are they out of date for this type of clash between different sets of international rules? Or are notions of mutual supportiveness and deference more suitable? And if so, what concrete content can be given to them? It is these and other challenges that this panel will confront.

Panelists: Donald McRae, University of Ottawa

Gabrielle Marceau, Counsellor, Cabinet of the Director-General, World Trade Organization

Franz Perrez, Federal Office for the Environment, Head of Section, Global Affairs (Switzerland)

Tseming Yang, Vermont Law School

Chair: Edith Brown Weiss, Georgetown University Law Center

The Laws of Force and the Turn to Evidence

International law has increasingly turned to "evidence" or information to provide the solid foundation for resolving questions about the legitimacy of resort to force, particularly when traditional legal doctrines governing the use of force are abandoned. Yet the turn to evidence only raises further questions for international lawyers, as is clear in debates about the sufficiency of intelligence as a foundation for the invasion of Iraq or the role of evidence in the war on terror. When and where does the "evidentiary requirement" arise? What evidence would suffice to justify humanitarian intervention, the use of force in self-defense or to establish the legitimacy of a mandate to authorize force on the part of the Security Council? What function does information gathered through national intelligence agencies play in such a legal system? Who determines which facts are relevant? What authority or agency is able to guarantee or judge the sufficiency of evidence, and ultimately the truth?

Panelists: Thomas Franck, New York University School of Law
Marie Jacobsson, Foreign Ministry of Sweden
Mary Ellen O'Connell, Notre Dame Law School
Thérèse O'Donnell, University of Strathclyde

Chair: Dino Kritsiotis, School of Law, University of Nottingham and University of Michigan Law School

Lecture: The American Society of International Law and the Rise of International Courts and Tribunals: An Eventful Century

The establishment and use of international courts and tribunals is one of the most significant developments in international law during the past century. Professor Caron will weave historical influences, including the Annual Meetings of the American Society of International Law and publications in the American Journal of International Law, with observations concerning the political theory of international courts and tribunals, to present an integrated analysis of the historical trajectory of international courts and tribunals and the way ahead.

Lecturer: David Caron, University of California at Berkeley School of Law

Commentators: Christine Van den Wyngaert, International Criminal Tribunal for the Former Yugoslavia

Moderator: Thomas Buergenthal, International Court of Justice

Fair and Equitable Treatment in International Law

Organized in conjunction with the British Institute of International and Comparative Law, this panel will address some of the broader issues in Investor- Host State arbitration by exploring the specific feature of the emerging regime for foreign direct investment that goes to the heart of whether investment protection law is just: the fair and equitable treatment standard. The fair and equitable treatment standard represents potentially the most important and also the most elusive obligation imposed on Host States among those prescribed by international investment law. In this connection, panelists will address the following questions:

- What may be the ways in which to bring clarity and certainty to such a standard?
- Should the regime operate through general principles or more detailed rules?
- What is the proper role of adjudicatory bodies in interpreting and applying standards such as fair and equitable treatment?
- What are the implications of the MFN clause found in most bilateral investment treaties for the applicable definition of fair and equitable treatment?
- Is it desirable and feasible to move toward a single multilateral institution where the foreign direct investment laws are negotiated and implemented?
- Will a standing-panel or appellate-adjudicatory body such as the WTO be capable of

improving uniformity and predictability emerge within the investment regime?

The fair and equitable treatment standard will emerge as a case study into the institutional, legal, and procedural dimensions of the emerging regime for foreign direct investment. Panelists will explore challenges to the system and opportunities for improvement, tackling the underlying question of whether the emerging legal regime for foreign direct investment is indeed just for both private and public interests.

Panelists: Rudolf Dolzer, University of Bonn
Florentino Feliciano, Supreme Court of the Philippines
Vaughan Lowe, Oxford University
Howard Mann, International Institute for Sustainable Development
Andrea Menaker, U.S. Department of State
Chair: Stephen Schwebel, Washington, DC

10:45 am–12:15 pm

Restoring the Rule of Law: Lessons from Iraq

This panel would assess the lessons derived from the United States', and to a far lesser extent the international community's, attempts to restore the rule of law in Iraq. The panel would explore, among others, issues surrounding the proposed Special Tribunal and the difficulties encountered in the constitutional reform efforts.

Panelists: Mark Drumbl, Washington & Lee University School of Law
Greg Kehoe, Advisor to the Iraqi Special Tribunal
Outi Korhonen, Université Libre de Bruxelles
Chair: Rosa Ehrenreich Brooks, University of Virginia School of Law

The Extraterritorial Application of Human Rights

States are increasingly acting outside their borders, but do their human rights obligations follow them? Whether human rights obligations (international or domestic) are restricted to a state's actions within its own territory, or within its jurisdiction or control, or apply to actions taken anywhere in the world, is hotly contested. Do domestic and international human rights obligations bind U.S. actions in Guantánamo or Israeli actions in the occupied territories? Does the European Convention on Human Rights, and implementing legislation like the UK Human Rights Act of 1998, apply to actions by British soldiers in Iraq? Can international human rights obligations be limited by subsequent UN Security Council Resolutions? And what responsibility do states have for regulating the human rights conduct of corporations acting extraterritorially? Each of these situations forces us to consider the extent or limits of domestic and international human rights obligations.

Panelists: Orna Ben-Naftali, College of Management Academic Studies
Michael Dennis, U.S. Department of State
Shaheed Fatima, Blackstone Chambers
Robert McCorquodale, University of Nottingham
Chair: Anthea Roberts, Debevoise & Plimpton LLP

Lecture: The Geological Strata of International Law

International law's modern history can be analyzed as geologic strata. For example, international treaty-making shows a preponderance of bilateral, contract-style treaties in the first decade of the twentieth century, a proliferation of multilateral law-making treaties pursued in mid-century shading also into constitutional-type treaties, and a thickening fourth layer of regulatory treaties at the end of the century. All four strata continue to accrete, but the physiognomy slowly changes, and the modes shift over time from transaction to community to

governance. Governance, and its regulatory treaties, have the most effects on individuals, markets, and national social values, posing questions of legitimacy and democracy in distinctive ways for international law now. This lecture will explore the potential and insights of a geologic approach to international law.

Lecturer: Joseph Weiler, New York University School of Law

Commentator: Liliana Obregon, Universidad de los Andes

Moderator: Carolyn Lamm, White & Case LLP

The Relationship Between Jus Ad Bellum and Jus In Bello: Past, Present, Future

Historically, jus ad bellum and jus in bello have been kept separate disciplinary categories, so that the one (jus in bello) applies irrespective of the other (jus ad bellum). At least, this is the position in theory. However, it is questionable whether there should now be a new normative dispensation, so that egregious violations of the one (jus in bello) could be regarded as the trigger for modern rights under the jus ad bellum. We have seen this in display over humanitarian interventions (most classically in northern Iraq in 1991 but, then, also in Kosovo, in 1999) since the end of the Cold War, but the issue has come to equal prominence in terms of the acts of terror and the subsequent war on terror. Are these phenomena related in any normative way? Should they be? Are the norms of the jus ad bellum the appropriate means of remedying violations of the jus in bello?

Panelists: Antoine Bouvier, International Committee of the Red Cross

Karen Engle, University of Texas School of Law

Jeff McMahon, Rutgers University

Frédéric Mégret, McGill University

Julie Mertus, American University

Chair: Jenny Martinez, Stanford Law School

12:30–2:30 pm

Women in International Law Interest Group Luncheon (separate registration required)

Speaker: Judge Rosalyn Higgins, President, International Court of Justice

Book Discussion: *The Dark Side of Virtue -- Reassessing International Humanitarianism*

Author: David Kennedy, Harvard University

Commentators: Robert Howse, University of Michigan Law School

Emmanuelle Jouannet, Université Paris I, Pantheon-Sorbonne

Moderator: Rebecca Irwin, Department of Prime Minister & Cabinet, Australia

1:00–2:30 pm

Business and Humanitarian and Human Rights Obligations

The circumstances in which corporations can be held liable for violations of international law is a topic of considerable theoretical and practical importance. This panel will consider the emerging scope of corporate responsibility for human rights and humanitarian law violations from multiple perspectives, including looking at developments at the UN, examining developments under the Alien Tort Statute, and considering corporate responsibilities under international humanitarian law. The panelists will highlight the international legal dimension of corporate social responsibility in the contemporary context.

Panelists: Kenneth Anderson, American University, Washington College of Law

James Gathii, Albany Law School

Emanuela-Chiara Gillard, International Committee of the Red Cross

David Weisbach, University of Michigan Law School

Resource Session Cosponsored by the Association of American Law Schools
Joining the Academy at Mid-Career

What are the challenges to joining the academy at mid-career? What are the standards of performance that ensure success as a law academic - in teaching, in research and publishing, in professional development? How can you prepare to make such a move? How can you determine whether teaching is right for you?

Organized as a roundtable discussion for those attending the ASIL annual meeting, this session will provide information on the hiring process for law teachers in the U.S., the qualities of a successful law teacher, and how much international law is taught in U.S. law schools today. The session will begin with a facilitated discussion among Roundtable Members to be followed by general discussion.

This program was planned in consultation with the AALS because it is the learned society for legal educators and offers a Faculty Appointments Register and Faculty Recruitment Conference to facilitate the hiring process for law schools.

Panelists: Marsha Echols, Howard University School of Law
Christopher Gibson, Suffolk University Law School
Vicki Jackson, Georgetown University Law Center

Moderator: Elizabeth Hayes Patterson, Deputy Director, Association of American Law Schools

Panel Cosponsored by the Canadian Council on International Law
Cultural Divides in Contemporary International Law

The notion of “cultural divides” can refer to those between one state and another (e.g., Canada and the United States) and to those within each country itself. Examining such divides may assist in understanding why a state interacts with the international legal system as it does, while focusing on that interaction can uncover cultural underpinnings buried in a nation’s past.

Professor Douglas M. Johnston, one of Canada’s pre-eminent international legal scholars, coined the title of this session, but illness prevents him from participating. Naturally, its content has evolved with the contributions of the individual panelists. Nevertheless, its overall intent remains: the panel will bring the perspective of a friendly neighbor and ally to the American debate on the function and suitability of international law. It seeks to enhance our understanding of each other’s engagement with the international legal system.

The group of Canadian legal scholars and practitioners chosen for the panel offers a breadth of expertise in several fields of international law. Moreover, it reflects not only the cultural divides of language and geography in Canada, but the diversity of professional experiences and positions that members of Canada’s international legal community have chosen.

Panelists: Maurice Copithorne, University of British Columbia
Robert Dufresne, Department of Foreign Affairs, Canada
Valerie Hughes, Gowling Lafleur Henderson LLP
Andrew Torrance, University of Kansas School of Law

Moderator: Donald Fleming, University of New Brunswick and President, Canadian Council on International Law

New Voices: Perspectives on Transitional Justice, Post-Conflict Societies and Human Rights

Perspectives on transitional justice and post-conflict societies.

Panelists: Kristen Boon, Columbia University... "International Financial Institutions Post-

- Panelists: Kristen Boon, Columbia University-- "International Financial Institutions, Post-Conflict Economic Reform and the Rule of Law"
 Hollin K. Dickerson, University of Texas-- "Assumptions of Legitimacy and the Foundations of International Territorial Administration"
 David Gray, Duke University-- "An Excuse-Centered Approach to Transitional Justice"
 Shadi Mokhtari, Osgoode Hall Law School-- "Reconsidering Power in International Human Rights Law: Lessons from Abu Ghraib"
- Chair: Lucy Reed, Freshfields Bruckhaus Deringer LLP

2:45–4:15 pm

Annual General Meeting

- Election of ASIL Officers and Members of the Executive Council
- Election of the 2006 Nominee for ASIL Honorary Member: Judge Hisashi Owada
- Presentation of Honors and Awards
 - 2006 Recipient of the Manley O. Hudson Medal: Judge Theodor Meron
 - 2006 Recipients of the Goler T. Butcher Medal: Professor Hilary Charlesworth and Professor Christine Chinkin
 - Recipients of the 2006 Book Awards and Deák Prize: To be Announced.
- ASIL at 100
 - Frederic L. Kirgis, Washington & Lee University School of Law and ASIL Secretary, "A Preview Presentation of The American Society of International Law's First Century: 1906-2006."
 - David Bederman, Emory University School of Law and Member of the Board of Editors, American Journal of International Law, "Reflections on 100 Years of AJIL Scholarship."

4:30–5:30 pm

Plenary Address by the Honorable Anthony Kennedy, Associate Justice, United States Supreme Court

5:45–7:00 pm

ASIL Academic Partner Program

Program Introduction: Dean T. Alexander Aleinikoff, Georgetown University Law Center
 U.S. International Law Theory: Possibilities and Problems

Controversies of international law theory have again become intensely salient in politics and in intellectual opinion in the US. This Panel asks questions going outside the usual arguments in these controversies. Why do current theoretical debates in the US now suddenly have such high stakes for international law globally? What is the impact in these debates of issues of history, race, gender and exclusion, in the US and in US engagement with the world? Does dispute about US policies shape controversies of US international law theory, or are the theoretical issues more fundamental and challenging?

Panelists: Berta Esperanza Hernández-Truyol, University of Florida
 Benedict Kingsbury, New York University School of Law
 Iain Scobbie, School of Oriental and African Studies
 Adrien Wing, University of Iowa College of Law
 Robert Williams, University of Arizona College of Law

Chair: Michael Reisman, Yale Law School

6:45–8:00 pm

Member Reception

ASIL Book Launch

- The American Society of International Law's First Century: 1906-2006 by Frederic L. Kirgis (Co-published with Martinus Nijhoff Publishers).
- Trade as Guarantor of Peace, Liberty and Security? Critical, Empirical and Historical Perspectives edited by Padideh Ala'i, Tomer Broude and Colin Picker (Co-published with the ASIL International Economic Law Interest Group).

This event is made possible in part through the contributions of ASIL Centennial Partners Debevoise & Plimpton LLP, Sullivan & Cromwell LLP, White & Case LLP and ASIL Academic Partner Georgetown University Law Center.

7:30–8:30 pm

Opinio Juris Wine and Cheese Reception on International Law Blogging

Join ASIL staff and the contributors of the international law blog Opinio Juris (www.opiniojuris.org) for an open and informal discussion about current trends in international law blogging. Established in 2005, Opinio Juris now includes six permanent law professor contributors (Chris Borgen, Peggy McGuinness, Julian Ku, Roger Alford, Kevin Heller, and Duncan Hollis) and has over 15,000 visits per month. If you are a blogger, reader, or just curious about this new medium, please join us.

8:00–10:00 pm

Executive Council Dinner

Interest Group Social Meetings

- Human Rights Interest Group
- International Organizations Interest Group
- Lieber Society

Friday, March 31

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7:45–8:45 am

Interest Group Business Meetings

- Dispute Resolution Interest Group
- International Economic Law Interest Group
- UN 21

9:00–10:30 am

Debate: Adjudicating Operation Iraqi Freedom

While considerable attention has been paid to possible (and variegated) grounds for the justification of Operation Iraqi Freedom in the literature of international law, it is clear that both the United States and the United Kingdom have advanced Security Council authorization as the basis for the intervention against Iraq in March 2003 (U.N. Doc S/350 (2003); U.N. Doc. S/351 (2003)). See also the remarks of William H. Taft at the 98th Proceedings of ASIL. Yet, the merits and persuasiveness of these arguments have never been fully tested, or subjected to any serious and sustained scrutiny. By drawing together counsel for both sides—in front of panel of judges from the academy of international law—this panel will put to the test the claim raised by the intervening states for Operation Iraqi Freedom (March 2003). Precise format is

yet to be calculated, but we are not averse to inclusion of rebuttals and surrebuttals—after each side has had the opportunity to mark out the elements of its case, and for that case to be assessed (or adjudicated) on its merits.

Presiding Judge: Diane Wood, U.S. Court of Appeals for the Seventh Circuit

Associate Judges: Christine Chinkin, London School of Economics
Yoram Dinstein, Tel Aviv University

Counsel: Philippe Sands, University College London
Ruth Wedgwood, School of Advanced International Studies, Johns Hopkins University

Lecture: The Legacy of Elihu Root

Rereading Root can mean reading Root anew or reading him differently. Slaughter will read him from the perspective of a political scientist, examining his underlying assumptions about how and why nations behave as they do. Three assumptions in particular bear scrutiny. First, his vision of international law assumed a world of "modern democracies," in which "popular control of national conduct" was steadily increasing. Second, he assumed that greater popular knowledge of the rights and obligations embedded in international law would increase the likelihood of support for peaceful settlement of disputes and more international cooperation. And third, he identified the greatest sanction of international law as the loss of national reputation. His assumptions about democracies essentially still hold among a majority of international relations scholars. His assumptions about the effects of increased knowledge of international law assumed a small and relatively coherent body of international law, as opposed to growth and differentiation of the subject into many different specialties. Thus the question today is really whether knowledge of human rights law, international environmental law, or trade law translates into respect for international law generally. Finally, his assumptions about the effects of reputation again fit quite neatly with the body of regime theory that places great weight on maintaining a reputation for credibility as a lasting incentive for international cooperation.

Lecturer: Anne-Marie Slaughter, Princeton University

Commentator: Tony Carty, Aberdeen Law School

Jonathan Zasloff, University of California at Los Angeles School of Law

Moderator: Charles N. Brower, Iran-U.S. Claims Tribunal

How to Make the DOHA Round a Genuine “Development” Round

The ongoing round of trade negotiations is referred to as the Doha Development Round (DDR). The Doha Ministerial Declaration mentions the term “development” 46 times, with different connotations, all of them implying either economic growth or economic development. This is the “classical” definition of development: economic growth is seen as the motor for economic development which should, in turn, improve social conditions in poor countries. Intellectual evolution has prompted a broader concept of development, incorporating other essential aspects such as democratic political practices, reduction of poverty and discrimination, institutional evolution, social development and sustainable development. The implications of this intellectual shift are felt in current practices at the United Nations and other development agencies, particularly the World Bank. At the WTO, however, development remains synonymous to economic growth. Should the concept of “development” be redefined also at the WTO? Moreover, to make progress toward “development” (re-defined or not), does special and differential treatment as it is currently understood in the WTO remain the main instrument? Data shows that special and differential treatment has not offered the expected gains. Must alternatives to S&D treatment (or even to trade as the engine for economic development) be considered? Or rather, must S&D treatment be made more specific and prominent in trade agreements? Where lay the interests of developing countries and what are

prominent in trade agreements. Where lay the interests of developing countries and what are the best strategies to achieve those interests inside and outside the WTO?

Panelists: Kevin Davis, New York University School of Law
Teresa Genta-Fons, World Bank
Gary Horlick, Wilmer Cutler Pickering Hale and Dorr LLP
Seema Sapra, King's College, London

Chair: Welber Barral, Pennsylvania State University, Dickinson School of Law

New Voices: International Law and War

Perspectives from the Use of Force, International Humanitarian Law and International Human Rights Law.

Panelists: Gina Heathcote, London School of Economics and Political Science--"Feminist Reflections on the Use of Force"
Carsten Stahn, International Criminal Court--"Jus ad bellum, jus in bello...jus post bellum"
Anicee van Engeland, Institut d'Etudes Politiques de Paris--" International Humanitarian Law and Islamic Humanitarian Law"
Philippa Webb, International Criminal Court--" Genocide from Multiple Perspectives: Same Law, Different Meanings"

Chair: Allison Danner, Vanderbilt University Law School--"When Courts Make Law: How the International Criminal Tribunals Transformed the Laws of War"

10:45 am–12:15 pm

Domestic Enforcement of International Decisions

This panel will consider how the responsibility for responding to the decisions of international tribunals is allocated among the branches of the U.S. federal government and the governments of other nations. After the International Court of Justice decided *Avena*, holding that the Vienna Convention on Consular relations entitled 51 Mexican nationals on death row in the United States to a hearing, the President took the position that, under the U.S. Constitution, the responsibility for determining whether and how to comply with the ICJ's ruling rested neither with the courts nor (exclusively) with Congress, but with the President.

Panelists: John B. Bellinger III, Legal Adviser, U.S. Department of State
Lori Damrosch, Columbia University School of Law
Mattias Kumm, New York University School of Law
Paul Stephan, University of Virginia School of Law

Chair: Catherine Amirfar, Debevoise & Plimpton LLP

Sex, Gender and International Law

There has been increasing attention paid to the relevance of sex and gender in international law. These subjects are no longer the sole province of feminist academics but have been infusing the norms of international law and its organizations. The Panel of both academics and practitioners in international law will look back on what has been happening in this respect and will look forward to consider the potential and problems of asking questions about sex and gender in international law so as to create a just world under law. Have sex and gender become central concerns in our discipline, or marginalized interests? What does the future hold for gender analysis in international law?

Panelists: Lama Abu-Odeh, Georgetown University Law Center
Fareeda Banda, School of Oriental and African Studies
Catharine MacKinnon, University of Michigan Law School
Binaifer Nowrojee, Open Society Initiative for East Africa

Chair: Cynthia Lichtenstein, Boston College Law School

The Status of the Individual in International Law

Sponsored by the Human Rights Interest Group, the Lieber Society, and the International Criminal Law Interest Group

Throughout much of the first hundred years of the ASIL, scholars and practitioners insisted that the individual was not and could not be a subject of international law. Was this ever true? Is it true today? How has the status of the individual changed during the past century and what are the trends for the future? This panel will look at the status of the individual in international law, tracing the evolving international legal personality of the individual in the years since the founding of ASIL, in fields as diverse as human rights, humanitarian law, trade and investment, international courts, international criminal law, and international environmental law, and from a wide range of perspectives.

Panelists: John Cerone, New England School of Law

Anne-Marie LaRosa, International Committee of the Red Cross

Vincent O. Nmehielle, University of Witwatersrand School of Law and Special Court for Sierra Leone

Dinah Shelton, George Washington University Law School

Chair: Alexandre Ch. Kiss, National Center for Scientific Research

Roundtable: War, Force and Revolution

Revolution (like terrorism) represents a moment of extraordinary force which stands outside or before the law. Yet international law seems nonetheless to have a secret sympathy with the romance of revolution, indicated perhaps by the presence of self-determination as a legal principle and later a right, or by the new enthusiasm for intervention to bring about regime change. And as Philip Allott insisted throughout the seminar on his work published in the *European Journal of International Law*, “We are living in revolutionary times”. Or are we? This roundtable discussion will address a series of questions about the relations between law, war, force and revolution. How has international legal doctrine understood, produced or regulated the bases upon which the foundational norms of legal systems undergo change? What part do the rules on the use of force play in this history? Is the revolutionary task of replacing capitalism as a system an urgent demand or an anachronistic irrelevance? What does the revolutionary narrative, driven by the oedipal desire to kill the father and replace him with the regime of the brothers, offer the sisters? Are we living through an era in which the relationship between violence, force and the grounds of law is undergoing its own revolution?

Panelists: Philip Allott, University of Cambridge

Nathaniel Berman, Brooklyn Law School

Ruth Buchanan, University of British Columbia

B.S. Chimni, WB National University of Juridical Sciences

China Miéville, Independent Researcher, London

Vasuki Nesiah, International Center for Transitional Justice

Gregor Noll, Faculty of Law, University of Lund

Chair: Anne Orford, University of Melbourne

12:30–2:30 pm

Luncheon and Lecture by 2006 Recipient of the Manley O. Hudson Medal, Judge Theodor Meron, International Criminal Tribunal for the Former Yugoslavia (separate registration required)

The Anatomy of an International Criminal Tribunal

Moderator: Michael Reisman, Yale Law School and Chair, 2006 ASIL Honors Committee

12:30–1:30 pm

Book Discussion: *The Rights of Others: Aliens, Residents and Citizens*

Author: Seyla Benhabib, Yale University
Commentator: T. Alexander Aleinikoff, Georgetown University Law Center
Moderator: Karen Knop, University of Toronto

1:00–2:30 pm

The Move From Institutions?

The early years of the 20th century were characterized by a move to formal international institutions, with large numbers of international lawyers working as problem-solvers through international administration and its national partners. Is the early 21st century likely to witness a move away from such institutions and, if so, toward what? Panelists will consider the growing number of informally-created institutions with selective membership (much favored in US policy), the current state of international bureaucracy and of the United Nations, the prospects and significance of regional institutionalization in the developing world, and the kinds of institutions needed or not needed in future global governance.

Panelists: Eyal Benvenisti, Tel Aviv University
Tiyanjana Maluwa, Pennsylvania State University, Dickinson School of Law
Helen Milner, Princeton University
Dan Sarooshi, University of Oxford and Essex Court Chambers, London
Chair: José Alvarez, Columbia University School of Law and ASIL President-Elect

International Environmental Law at the Beginning of the 21st Century

Cosponsored by the International Environmental Law Interest Group

There is no doubt that environmental protection has become a common concern at the international, regional and local levels. International environmental law since its emergence in the 1970s has expanded tremendously, while affirming its own features as well as expanding into other areas of law. However, a fair question to ask ourselves is whether International environmental law as developed can meet all the challenges facing humankind. Is it forceful enough to impose itself in the face of important economic and political interests? Are the institutions strong enough to voice the environmental concerns? Are the norms and principles precise enough to influence states' and other actors's behavior?

Panelists: Daniel Bodansky, University of Georgia School of Law
Jutta Brunnée, University of Toronto Faculty of Law
Kevin R. Gray, Department of Foreign Affairs, Canada
Ellen Hey, School of Law, Erasmus University Rotterdam
Ileana Porras, Arizona State University College of Law
Chair: Laurence Boisson de Chazournes, University of Geneva

Resource Session Cosponsored by the McGeorge School of Law, University of the Pacific
Globalizing the Law Curriculum

This Roundtable discussion will look at the burgeoning effort in legal education to expose all students to international law and transnational legal issues. It will focus on an initiative involving faculty at a number of law schools, including Pacific McGeorge, to facilitate consideration of international law and transnational problems in basic law school courses, such as Contracts and Criminal Law. This includes the development of teaching materials for use in this new environment. The Roundtable will touch on the intellectual challenges that this project has posed for author, teacher, and student. The session will begin with a facilitated discussion among Roundtable members to be followed by general discussion.

Panelists: Christopher Blakeslev William S. Boyd School of Law University of Nevada Las

Panelists: Christopher Danaher, William S. Boyd School of Law, University of Nevada Las Vegas
Linda Carter, McGeorge School of Law, University of the Pacific
Michael Malloy, McGeorge School of Law, University of the Pacific
John Andrew Spanogle, George Washington University Law School
Chair: Frank Gevurz, McGeorge School of Law

Panel Cosponsored by the American Branch, International Law Association

International Cultural Law: Looking Back and Looking Ahead

During the past 100 years, the international community has struggled with a welter of issues related to culture, cultural heritage and cultural divisions. The issues are diverse. Just a few current examples include the looting of museums, libraries and archaeological sites in Iraq; the marginalization of traditional knowledge in a global regime of intellectual property rights; the use by athletes in international competition of steroids and other performance-enhancing drugs; the Muslim headscarf question in France; and the suppression of linguistic and religious minorities throughout the world. Over the years such issues have generated specific legal regimes and substantial legal commentary. The development of a coherent body of international cultural law is a work in progress whose origins coincide with those of the International Law Association (ILA) and the American Society of International Law. Both organizations have contributed significantly to the development of cultural heritage law. Panelists will highlight the historical reciprocity of cultural concerns and international law before turning to cutting-edge developments today, including the work of the ILA Committee on Cultural Heritage Law.

Panelists: Mark Janis, University of Connecticut School of Law
Bob Paterson, University of British Columbia
Alison Dundes Renteln, University of Southern California

Chair: James Nafziger, Willamette University College of Law

2:45–4:15 pm

The Powers of the Commander in Chief in the Struggle Against Terrorism

This panel will consider the scope of the U.S. President's Commander in Chief power in the struggle against Al Qaeda and the military operations in Afghanistan and Iraq. Issues to be discussed include the role of international law in limiting the President's constitutional authority, the scope of the President's power to use military tribunals to try violations of the laws of war, the judicial enforceability of the Geneva Conventions and other pertinent treaties, and more generally the proper role of the courts in reviewing Executive wartime actions.

Panelists: David Golove, New York University School of Law
John Harrison, University of Virginia School of Law
Thomas Hemingway, Office of Military Commissions
Deborah Pearlstein, Human Rights First

Chair: Curtis Bradley, Duke University School of Law

Lecture: The HIV/AIDS Pandemic and the Role of International Law

The HIV/AIDS pandemic has taken an unprecedented toll on our global society, especially in sub-Saharan Africa. Some 40 million people worldwide are now infected with the virus, and more than 3 million people died just last year. What are States' obligations in responding to this pandemic? Specifically, what are the respective obligations of sub-Saharan African States, and of other States, in "a just world under law"? What are the limits of the existing international human rights framework in protecting vulnerable individuals and groups? To what extent are so-called "second-generation" rights (social, economic and cultural rights), which include the right to health, justiciable?

Lecturer: Stephen Lewis, Special Envoy of the Secretary-General for HIV/AIDS in

AIICA

Commentators: Obijiofor Aginam, Carleton University
Nikki Naylor, Interrights
Moderator: Ellen Walker, University of Michigan JD

Lecture: Peace v. Justice: Contradictory or Complementary

This panel would explore the basic question of who owns post-conflict justice. Specifically, does the international legal community's interest in showing no impunity to transgressors trump the local community's interest in negotiating a peaceful resolution? Are these interests reconcilable? This panel would explore these issues using the developments in and lessons from Rwanda, Bosnia, Sierra Leone, East Timor and more recently, northern Uganda. Of particular interest is the emergence of hybrid models for achieving justice, such as the case of Sierra Leone, in which the legislation underlying the special tribunal expressly provides for a truth and reconciliation commission.

Lecturer: H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein, Permanent Representative of the Hashemite Kingdom of Jordan to the United Nations

Commentators: Betty Bigombe, World Bank
Marieke Wierda, International Center of Transitional Justice

Moderator: Mahnoush Arsanjani, United Nations

Just Trade Under Law: Do We Need a Theory of Justice for International Trade Relations?

The law of international trade (GATT/WTO) is traditionally perceived as the result of a bargaining process. In this process, countries exchange trade concessions driven by self-interest. At the same time, they do share an underlying agreement that liberalized trade is normatively desirable as it increases overall welfare; and developed nations have granted special treatment to developing countries. Now that the law of the WTO has expanded both in width and depth does this framework remain valid/sufficient? Given the persisting divide between rich and poor, both between and within member countries of the WTO, is there a need for a more sophisticated theory of justice? What theory of justice is most appropriate at the international level (as opposed to the domestic level of national politics)? Should the WTO, or international law in general, focus only on wealth creation (by enhancing trade opportunities) or also engage in the process of redistribution (through, for example, transfers of assets from rich to poor)? What are the lessons, in this respect, from the largely failed attempts by developed countries to set up a New International Economic Order through the United Nations; and the limited success of special and differential treatment granted to developing countries in the GATT/WTO?

Panelists: Georges Abi-Saab, WTO Appellate Body
Christian Barry, Carnegie Council on Ethics and International Affairs
Susan Esserman, Steptoe & Johnson LLP
Frank Garcia, Boston College Law School

Chair: Joost Pauwelyn, Duke University School of Law

5:30–6:30 pm

ASIL Academic Partner Program

Program Introduction: Dean Frederick M. Lawrence, George Washington University Law School

Plenary Address by Judge Rosalyn Higgins, President, International Court of Justice

Moderator: Judge Thomas Buergenthal, International Court of Justice

6:30–7:45 pm

President's Reception

This event is made possible in part through the contributions of ASIL Centennial Partners Debevoise & Plimpton LLP, Sullivan & Cromwell LLP, White & Case LLP and ASIL Academic Partner George Washington University Law School.

7:00–9:00 pm

Interest Group Social Meetings

- International Legal Theory Interest Group
- Rights of Indigenous Peoples Interest Group

8:00–11:00 pm

Annual Dinner

Centennial Toasts by ASIL Past Presidents Thomas Franck and Anne-Marie Slaughter

Saturday, April 1

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7:45–8:45 am

Interest Group Business Meetings

9:00– 10:30 am

Roundtable: The International Court of Justice at 60: Performance and Prospects

The International Court of Justice is the preeminent international tribunal in the world. At the same time, recent cases including *Oil Platforms*, *Avena* and the *Wall Advisory Opinion* have given rise to controversy over the reasoning of its judgments, the adequacy of its fact-finding, the politicization of its proceedings, and the impartiality of its judges. Most States do not accept its compulsory jurisdiction, and the proliferation of international tribunals suggests that States are looking to the availability of other fora for matters that could be brought before the Court. This Panel will present an analysis of the Court by scholars and practitioners who have studied and appeared before the Court. A member of the Court will comment on the issues facing the Court as seen from within.

Panelists: Daniel Bethlehem, Legal Adviser (Designate), Foreign and Commonwealth Office, United Kingdom

Vera Gowlland Debbas, Graduate Institute of International Studies

William Howard Taft IV, Fried Frank Harris Shriver & Jacobson, LLP

Commentator: Bruno Simma, International Court of Justice

Chair: Stephen Mathias, Multilateral Forces and Observers

Human Rights and Fundamentalisms

International lawyers have arguably paid insufficient attention to fundamentalisms, where fundamentalisms are understood as “political movements of the extreme right, which, in a context of globalization... manipulate religion... in order to achieve their political aims.” (Marieme Hélie-Lucas) The language of fundamentalisms speaks across religious (and other) boundaries about movements within many traditions. Many of these movements are seen by some as forwarding agendas which threaten basic human rights norms. In fact, experts have argued that they represent one of the major obstacles to the advance of women’s human rights at the dawn of ASIL’s second century. Yet, they sometimes employ the language of religious freedom to defend their cause, claims recognized by some, raising profound challenges for international human rights law. Is the term “fundamentalisms” (as opposed to alternatives like

religious extremism/radicalism/intolerance) useful and appropriate? Does international law afford tools for conceptualizing fundamentalisms and appropriate responses thereto? What is the impact of fundamentalisms on international human rights law? How do we engage in this discussion universally so as to avoid the phenomenon described by one commentator as Islam becoming the trope for religion? What can other disciplines offer to international law's encounter with these issues?

Panelists: Doris Buss, Carleton University
Peter Danchin, Columbia University School of Law
Gita Sahgal, Women Against Fundamentalisms
Seval Yildirim, Whittier Law School

Chair: Karima Bennoune, Rutgers School of Law, Newark

Law and Development: Problems, Perspectives and Prospects

The issues of what role law plays in promoting development, and how different countries, development institutions and scholars conceptualize this relationship continues to be a matter of intense debate. How has the formulation of the Millennium Development Goals affected the practice of law and development, if at all? Scholars and practitioners approach the broad questions of law and development from a variety of perspectives: from a law and society perspective, or a law and economics perspective; or from working on a particular legal regime such as bankruptcy; or from assessing the impacts of law and development practices on specific groups-indigenous peoples, women. What different insights are provided into the broader questions raised by law and development by these approaches, and where do we now stand in our understanding of these crucial issues?

Panelists: Hiram Chodosh, Case Western Reserve University Law School
Mohan Gopal, National Judicial Academy, India
Matjaz Nahtigal, Government of Slovenia
Kerry Rittich, University of Toronto Faculty of Law

Chair: John Ohnesorge, University of Wisconsin

Judicial Enforcement of Treaties: Self-Execution and Related Doctrines

The panel will focus on the relationship between the doctrine of self-execution (and non-self-execution) of treaties and the broader question of when treaties are enforceable in domestic courts. For example, there is disagreement over whether a non-self-executing treaty can be applied via the Charming Betsy canon, and whether treaties should be presumed to be self-executing or non-self-executing. Additionally, when it is clear that a treaty is self-executing, there is controversy about what exactly that means. Faced with concededly self-executing treaties, some courts and scholars have maintained that treaties, even though self-executing, do not create judicially enforceable rights or a private right of action, issues that other courts and scholars believe are addressed by self-execution doctrine. This panel will attempt to sort out the difficult issues raised by this "most confounding" doctrine.

Panelists: Robert Dalton, Senior Adviser to the Legal Adviser, U.S. Department of State
Vasan Kesavan, D.B. Zwirn & Co.
Ann Woolhandler, University of Virginia School of Law

Chair: Carlos Vázquez, Georgetown University Law Center

10:45– 11:30 am

Resource Session Presented by the Project Managers of the ASIL's Electronic Information System for International Law (EISIL)

Researching International Law from Outside the United States

This resource session will focus on the research needs and requirements of those who work outside the U.S. The session will provide opportunities to explore ways to maximize efficiency in locating international law on the web, supplement international law collections, and using EISIL as a tool for teaching and scholarship. The session will begin with a short demonstration and presentation drawing on user experiences with EISIL and will then be open for general discussion.

EISIL Project Managers: Marci Hoffman, University of California at Berkeley School of Law
Jill Watson, Washington, DC

11:15 am– 12:45 pm

Closing Plenary: Disciplining the Discipline: Roles and Responsibilities of International Lawyers

This plenary session addresses our own responsibility, as international lawyers and advocates, to bring about "a just world." Recent controversies, many related to the "war on terror," have led international lawyers to re-examine their obligations. Some have stepped out of the ivory tower or private sector to join the public debate, for example by opposing the war in Iraq through legal argument or defending the treatment of detainees in Guantánamo Bay. Others, working for governments, argued that their proper role was to provide the best legal case for their clients without regard to basic policy choices. We will therefore close the meeting by considering our individual capacity, whether in academia, government, international organizations, nongovernmental organizations, or the private sector, to contribute to justice in the international arena.

Panelists: Elisa Massimino, Human Rights First

Nicolas Michel, Under-Secretary-General for Legal Affairs, United Nations

Naz Modirzadeh, American University in Cairo

Elizabeth Wilmshurst, Royal Institute of International Affairs

Chairs: Donald Francis Donovan, Debevoise & Plimpton LLP

Hilary Charlesworth, Australian National University

1:00– 3:00 pm

Workshop on Selective Adaptation in International Trade and Human Rights Compliance

This Workshop examines the local reception and (re-)construction of international trade and human rights standards in China, Japan, and Canada as an exercise in Selective Adaptation (Potter, in *Law & Social Inquiry* 2004). Drawing on discourses of globalization that identify norms of liberalism underlying international rule regimes, the panel will examine how local acceptance of international standards is mediated by conditions of local legal cultures. The Workshop is based on a large international cooperative project supported by the Major Collaborative Research Initiatives (MCRI) program of the Social Sciences and Humanities Research Council of Canada (SSHRC). Having completed initial survey and archival research in China, Japan, and Canada, the research team is preparing to examine the ways that perception about local and non-local norms, complementarity between local and non-local systems, and legitimacy in the process of compliance with non-local rule regimes affect the dynamic of Selective Adaptation. Confronting assertions about local cultural relativism and particularity on the one hand and globalized homogeneity on the other, the Workshop will address theoretical and methodological issues in the relationship between acceptance of international rules and assimilation of underlying norms. The Workshop will be particularly important for comparative law and treaty compliance studies, examining critical questions of legal culture theory and method in understanding the role of local interpretive communities (Fish, 1980) in reception (Unger, 1975) and compliance (Etzioni, 2000) with international standards.

Panelists: Ljiljana Biukovic, University of British Columbia

Lesley Jacobs, York University
Moderator: Pitman Potter, University of British Columbia, Principal Investigator, "Asia-Pacific Program on Cross-Cultural and Comparative Research in Dispute Resolution"

Workshop on Teaching International Humanitarian Law in Universities
Cosponsored by the International Committee on the Red Cross

A panel discussion including the authors of "How Does Law Protect in War?", Antoine Bouvier and Marco Sassoli, as well as professors who teach international humanitarian law and use the book as an effective tool in the classroom. The International Committee of the Red Cross is releasing, this spring, the second edition of this respected casebook and reference work on the jurisprudence of international humanitarian law.

Refreshments will be served immediately after the discussion.

Workshop on Standards, Patents, and International Trade: When Do Standards Become Barriers?
Sponsored by the ASIL Intellectual Property Interest Group

The discussion will focus on the issues concerning the development of standards in the international context, and circumstances where standards facilitate trade or become barriers to trade. Standards often embody significant intellectual property protected through patents. The panel discussion will cover issues that have between the United States, China and other countries concerning the use of standards for adoption of new technologies to gain competitive advantage or as form of potential protectionism, and the potential conflict between patents and standards.

Following the panel discussion, the IP Interest Group will hold its annual meeting to discuss activities for the coming year.

ASIL Intellectual Property Interest Co-Chairs: Elizabeth Chien-Hale
Christopher Gibson

4:00 pm

2006 Philip C. Jessup Moot Court Competition Final Round
Organized by the International Law Students Association and Co-hosted by The American Society of International Law

The 2006 Jessup Problem is The Case Concerning the Elysian Fields. The final round of the competition will begin at 4 pm at the Ceremonial Courtroom, Room 4106, US District Court for the District of Columbia, 333 Constitution Avenue, NW. Those interested in attending are urged to arrive early for security screening and seating. No cameras or cell phones are allowed.

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