



The Law School's Global Presence

NYU's global law initiative is transforming legal education at a fundamental level. Since the Global Law School Program was announced in 1994, NYU has worked to create a center for intellectual exchange that extends beyond national borders. Today, the Law School is recognized for its place at the forefront of research and teaching about law in the context of today's world.

Each year, a broad range of new courses are brought to the curriculum by the global law faculty; and each year, the Law School attracts from around the world leaders of academia, business, government, and the judiciary to take part in a variety of conferences and projects.

Yet in spite of the Law School's advances in global legal education, there is much work to be done. The pages that follow provide a sample of the Law School's offerings over the past year. Even more will be added this year.

Dialogue II: Progressive Governance In the 21st Century

For the second time in two years, NYU School of Law provided a forum for a meeting unlike any ever to occur in an academic institution. This time, the Law School joined with the European Institute to host the event, beginning with an opening dinner at NYU's magnificent Villa La Pietra and continuing the next day at the Palazzo Vecchio, Florence's spectacular City Hall chamber.



The Dialogue in Florence, held at the Palazzo Vecchio, brought together six heads of state for an open discussion on the future and how to govern it. Participants included (l-r): British Prime Minister Tony Blair, Brazilian President Fernando Cardoso, Italian Prime Minister Massimo D'Alema, United States President Bill Clinton, French Prime Minister Lionel Jospin, and German Chancellor Gerhard Schroeder.

The conference, "Progressive Governance in the 21st Century," brought together for a full day of conversation with faculty and students an unprecedented collection of world leaders, including British Prime Minister Tony Blair, Brazilian President Fernando Cardoso, U.S. President William Jefferson Clinton, then Italian Prime Minister Massimo D'Alema, French Prime Minister Lionel Jospin, and German Chancellor Gerhard Schroeder. Other participants included First Lady Hillary Rodham Clinton and Romano Prodi, President of the European Union. The Mayor of Florence

described it as perhaps the most important gathering in that town since the Renaissance.

The Florence meeting was the second stage of a conversation that had begun the year before, in 1998, when NYU hosted at Washington Square the global forum, "Strengthening Democracy in a Global Economy," which brought together President Clinton, Prime Minister Blair, Italy's then Prime Minister Prodi, and Bulgarian President Peter Stoyanov with a host of global leaders from business, labor, and the academy for a day of candid public discussion. That day, the leaders joined with

dozens of other leaders of the public and private sector to discuss with NYU faculty and students the role of government in coping with the challenges of a global economy to civil society.

The Florence meeting was structured around papers prepared by NYU and European University faculty and distributed to the leaders in advance of the conference. The papers explored ways of steering society toward new solutions for problems anticipated in the coming decades by moving beyond traditional liberal and conservative divides. NYU professors who authored papers were Ronald Dworkin, Eleanor Fox, Larry Kramer, and Richard Stewart; European University Institute professors were Philip Alston (also a member of NYU's global law faculty), Maurizio Ferrera, Yves Mény, Martin Rhodes, and Thomas Risse.

The two-day event opened with a formal dinner hosted by the Law School at Villa La Pietra, NYU's 57-acre estate in Florence. In addition to the world leaders on the program, the Prime Minister of Portugal, Antonio Guterres, then recently elected president of the Socialist International, joined the party. So did NYU trustees, faculty, students, and other guests, including actor Roberto Benigni and tenor Andrea Bocelli (who sang). Before the dinner, President Clinton met privately with Prime Minister D'Alema for about forty-five minutes.

In welcome remarks, Dean John Sexton declared the dinner "a quintessentially global moment," and presented the NYU Global Leadership Award to First Lady Hillary Clinton. Sexton credited Mrs. Clinton with being a major force behind the conference.

Professor Norman Dorsen then introduced President Clinton, who addressed the 160 guests, describing what he perceived as the biggest threats to world peace. "I believe that the biggest problems to our security in the 21st century and to this whole modern form of governance will probably come not from rogue states or people with competing views of the world in governments but from the enemies of the nation-state, from terrorists and drug runners and organized criminals who, I predict, will increasingly work together and increasingly use the same things that are fueling our prosperity: open borders, the Internet, and the miniaturization of all sophisticated technology, which will manifest itself in smaller and more dangerous weapons," he said.



Dialogue Two: Progressive Governance in the 21st Century Florence, 1999

**Session One:
The New Economy:
Equality and Opportunity**

**Session Two:
The Democracies in the 21st Century:
Values, Rights, and Responsibilities**

Panelists:

Tony Blair

Prime Minister of the United Kingdom
of Great Britain and Northern Ireland

Fernando Cardoso

President of Brazil

William Jefferson Clinton

President of the United States

Massimo D'Alema

Prime Minister of Italy

Lionel Jospin

Prime Minister of France

Gerhard Schroeder

Chancellor of Germany

Speakers:

Norman Dorsen

NYU School of Law

Yves Mény

European University Institute

Javier Solana

Secretary General of the
Council of the European Union

Juan Somavia

Director-General of the
International Labor Organization

The following day, the conference moved from the Villa La Pietra to the Palazzo Vecchio in downtown Florence. Even older than La Pietra, the Palazzo Vecchio boasts a long and colorful history going back to 1294. With its crenellated clock tower, famous frescoes, priceless paintings, and model statues, it has been the center of Florentine civil life for centuries.

In his opening remarks, Prime Minister D'Alema informed his colleagues that he wished to see "a set of common progressive ideas" emerge in the discussions. As governmental host, he would moderate the discussion of the issues raised in the faculty papers, speaking always to discern the elements of agreement leading to unity, rather than to emphasize differences and divergences.

The theme of the morning session was "The New Economy: Equality and Opportunity." The task at hand was to discuss ways of reconciling the politics of economic growth with that of social justice in a context dominated by the constraints and opportunities created by globalization.

At the lunch, hosted by the mayor of Florence, Javier Solana of the European Union and former Secretary General of NATO and Juan Somavia offered comments on the morning's discussion.

The afternoon session, entitled "The Democracies in the 21st Century: Values, Rights, and Responsibilities," focused more squarely on political problems, challenges, and opportunities. It also provided an opportunity for faculty and others in attendance to put questions to the leaders.

Professor Norman Dorsen raised two points in his remarks. First, he emphasized the importance of increasing the number of women in influential positions in the global community, eliminating the still widespread discrimination. Dorsen then asked the leaders what their response was to the fact that supra-national and regional organizations, from the U.N. to the World Bank to various courts, are largely unaccountable to the democratic process. "How," he asked, "will this 'democratic deficit' be cured to give needed legitimacy to these issues?"

Professor Philip Alston raised a similar point when he asked about efforts to protect human rights from transgressions by the IMF and transnational corporations.

A recurring theme for President Clinton and Prime Minister Blair was the "Third Way" – what the U.S. President dubbed as

a theory that says "yes" to the market economy, but "no" to the market society." The phrase and the idea behind it are the brain-child of Anthony Giddens, the British social philosopher who is Director of the London School of Economics and who participated in the 1998 conference at NYU. Clinton pressed home the overarching role of education: "If you wish to promote equality and opportunity, there must be a strategy first to close the skills gap, which means that there's a role for government. We have to spend more money – not less – than ever before on education; it needs to start sooner; it needs to last for a lifetime."

Blair agreed with Clinton that education is a social and economic issue: "The role of government in the economy today is that of an enabler," he said. He also stressed that the answers to economic and social problems, which many previously saw as being in conflict, could only be resolved together. "The key to our discussion is that the economic and social questions are intimately connected," he said. "We live in a new era where it is human capital that will determine economic success."

Clinton also spoke about the need to preserve the environment while promoting economic growth. "Technology has permitted us to say for the first time since the Industrial Revolution that it is no longer necessary to grow an economy to burn more greenhouse gases, to burn up the atmosphere. It is now possible to grow an economy and actually use less greenhouse gases and put less strain on the economy."

Technology can be the key for economic progress in developing nations, Clinton added, while admitting he himself is inept



Dean John Sexton awards First Lady Hillary Rodham Clinton the NYU Global Leadership Award for her role in creating the dialogue.



Prior to the opening dinner at NYU Villa La Pietra, President Clinton held a private bilateral meeting with Prime Minister D'Alema of Italy. Immediately following that meeting, the heads of government gathered in the Villa's dining room. (L-r): NYU President L. Jay Oliva, British Prime Minister Tony Blair, European University Institute President Patrick Masterson, Portuguese Prime Minister Antonio Guterres, European Commission President Romano Prodi, German Chancellor Gerhard Schroeder, Brazilian President Fernando Cardoso, United States President Bill Clinton, Italian Prime Minister Massimo D'Alema, French Prime Minister Lionel Jospin, and NYU School of Law Dean John Sexton

with state-of-the-art equipment. Technology can eliminate "the digital divide" between the rich and the poor. Those who are computer-illiterate or who have little access to the most modern communications equipment face a particularly difficult time achieving economic comfort now that society depends so heavily on technology. "The people who have access to the Internet and technology have enormous advantages over those who do not, and the gap has to be closed. We are now hooking up all of our classrooms to the Internet, and we should

finish next year. Also, we ought to do everything we can to get more cell phones and computer hookups out there. The people in Africa are no different from the people in America. If you give people access to technology, a lot of smart people will figure out how to make a lot of money."

The French Prime Minister, Lionel Jospin, said that France needed to "catch up" with advances in technology. Attendance at the Florence conference was no easy decision for the outspokenly Socialist Jospin, who has been on record taking a dim view of the

so-called "Third Way" politics that have defined Blair, and to a lesser extent, Clinton. In Florence, Jospin warned against the excesses of "market economy thinking in the social sector."

Prime Minister Massimo D'Alema, former head of the old Italian Communist Party, now "Democratic Party of the Left," was particularly well-placed to speak out for "the common search for a compromise between capitalism and democracy, between the demands of the economy and the imperatives of political consensus."

Dialogue One: Strengthening Democracy in the Global Economy New York, 1998

Panel One: Civil Society and the Future of Democracy

Roger Altman

Evercore Partners, Inc.

James Chace

Editor, *World Policy Journal* at New School University

Hillary Rodham Clinton

First Lady of the United States

Ronald Dworkin

NYU School of Law

Anthony Giddens

Director, London School of Economics

Olara Otunnu

Special Representative of the U.N. Secretary General for Children and Armed Conflict

Moderator: Norman Dorsen

NYU School of Law

Panel Two: The New Economy and the Future of Opportunity

Al From

Democratic Leadership Council

Robert Hormats

Vice Chairman, Goldman Sachs International

Rosabeth Moss Kanter

Harvard Business School

Richard Stewart

NYU School of Law

John Sweeney

President, AFL-CIO

Laura Tyson

Walter A. Haas School of Business

Moderator: Martin Lipton

Wachtell, Lipton, Rosen & Katz

Panel Three: Strengthening Democracy in the Global Economy

Tony Blair

Prime Minister of the United Kingdom of Great Britain and Northern Ireland

William Jefferson Clinton

President of the United States

Romano Prodi

President of the Council of Ministers of the Republic of Italy

Peter Stoyanov

President of the Republic of Bulgaria

Moderator: John Sexton

Dean, NYU School of Law

Setting the Foundation for “Progressive Governance in the 21st Century”

Papers Prepared by the NYU School of Law Faculty

Does Equality Matter?

Ronald Dworkin

Professor Dworkin looks at the recent trend to view equality as an antiquated political ideal, replaced instead with the notion that government is obligated to provide only a minimal set of standards for all. Dworkin rejects abandoning equality as an abstract ideal because “the most fundamental commitment of a legitimate political community – a commitment on which its legitimacy depends – is itself an abstract egalitarian commitment.” Instead, he emphasizes the need for an interdependence of philosophical and practical explorations to show how a theory of equality can be located in a more general account of the humane values of ethics and morality.

Global Markets, National Law and the Regulation of Business: The New “New International Economic Order”

Eleanor Fox

Economic liberalization and dynamic technological developments are changing the dimensions of markets. Both phenomena drive increasing economic integration in the world, making national borders irrelevant and sometimes even a barrier to global commerce. Professor Fox stimulates a dialogue on liberal solutions to the problem of incoherence between national law and global commerce. She suggests an open architecture and the embracing of principles of cosmopolitanism that would link the nations and peoples of the world while respecting subsidiarity.

Political Organization and the Future of Democracy

Larry Kramer

Professor Kramer looks to the past for lessons gleaned concerning the struggle for democracy by considering the adoption of the United States Constitution in 1789 and the corresponding rise of federalism and anti-federalism, and highlights the importance of public participation of a nation's citizens. A challenge leaders face in the

21st century is that in the face of intense pressure for greater centralization of authority at an international level, political leaders must “devise new means and new forms of political organization to draw the public in – to give ordinary citizens a sense not merely that the policies being adopted are good, but that these policies are also theirs.”

Global Governance for Sustainable Development

Richard Stewart

The coming decades pose an enormous challenge of governance for the global community: preserving the planet's ecosystems and protecting the world's common environment while meeting the aspirations of all peoples for higher personal and societal levels of economic welfare. Meeting this challenge will require newly developed and developing countries and public/private international partnerships for sustainable development; wider adoption of economic instruments for environmental and resource protection; improved international mechanisms for risk assessment and resolution of trade/environment controversies; and more focused and effective international environmental laws and institutions with a tough-minded focus on achieving tangible results.

Papers Prepared by the European University Institute Faculty

The “Not-a-cat” Syndrome: Re-thinking Human Rights Law to Meet the Needs of the 21st Century

Philip Alston

In exploring the challenges to protecting international human rights, Professor Alston asks how to hold accountable international institutions – many which wield immense influence while disavowing all pretensions to exercise authority per se, such as the International Monetary Fund and the World Bank – which are classified as non-state entities. As the United Nations concerns itself exclusively with state matters, Alston points out that there needs to be some measure taken to address human rights violations of these non-state actors.

Five (Hypo)theses on Democracy and Its Future

Yves Mény

As democracy has risen as the dominant Western political model, external threats have been replaced by internal challenges. Historically, the market has been intricately linked with democracy. Yet today, the globalization process differentiates more and more the market from democratic space, and we now are faced with finding out how much diversity markets and democracy can accommodate to remain universal tools and values. To this end, Mény suggests the need for new definitions of central democratic values such as liberty, equality, and solidarity.

Democratic Global Governance in the 21st Century

Thomas Risse

As the world has changed profoundly, Professor Risse calls for the world powers of the United States, the European Union, and the major European countries to provide moral, intellectual, and political leadership to address the world's problems. In his article, Risse addresses three topics in contemporary international relations: lessons learned from international conflicts which took place during the 1990s; developing “global governance” to achieve international peace, security, and welfare; and governing an integrated world economy.

Building a Sustainable Welfare State: Reconciling Social Justice and Growth in the Advanced Economies

Maurizio Ferrera

Martin Rhodes

Professors Ferrera and Rhodes urge for a recasting of the welfare state. Efficient public services are an important institutional condition for competitiveness. As such, social and welfare policies should be part of an institutional ensemble that fosters long-term relations of trust. This includes the construction of social and electoral coalitions around welfare reform programs, as well as developing a system of market and labor regulation that stimulates a longer-term product development strategy.



Students on their way to the opening dinner at Villa La Pietra. (Front, l-r): Rafiq Kalam Id-Din ('00), Sharon Selby ('00), Tanya Southerland ('00), Jonathan Wishnia ('02), Rafael Brasdefer ('00), Tammy Stafford ('01), and Kristine Cioffi ('00). (Back, l-r): Sarah Weiss ('00), Marc Mitchell ('02), Inosi Nyatta (LL.M.'00), Ludivine Tamiotti (LL.M.'00), Alexander Wang ('00), Jasper Pauw, Donna McGee ('00), Christopher Belline (LL.M.'00), Sergei Antonov ('02), and Michael Allegritti

President Fernando Cardoso of Brazil said that the Florence meeting underscored the growing consciousness among all sectors of the importance of globalization and, for the group present, how it reduced the "margins of maneuver of government." He invited statesmen to reflect on the need for "new rules for the planetary game," including economic reform. "Without a competent government, essentially the market will suffocate social welfare," he said, adding that while Brazil faced different problems than those of more economically advanced countries, dialogue was nonetheless a useful tool because many of the problems demanded global solutions.

President Clinton then elaborated on his views. "Up to the present moment, mostly you were for the economy or for protecting the environment; you were for business or you were for labor; you were for promoting work or for promoting family life; you were for preventing crime or for punishing criminals; you were for cultural diversity or for universal identity; you were for the market society or for social values. Now, we come and say, well, we're for fiscal responsibility and full employment; we're for personal responsibility and social justice; we're for individual and group identity and the national community."

Chancellor Schroeder did not fully embrace the market approach of Clinton and Blair, saying that "social issues have to be included in our economic considerations." He said that "the most important ties that

bind us are our constitutions," which guarantee the value of law in our countries.

The day ended with each leader offering remarks. In closing, Prime Minister D'Alema proposed the creation of a European cultural foundation that would work with NYU to continue to study the topics raised at the conference, thereby providing the essential academic underpinnings for future dialogues among world leaders.

The conference represented another achievement for NYU's Global Law School Program. Created in 1994, the Program linked burgeoning globalization with the

need for a trained leadership to meet the demands of the time. The Law School committed itself to broadening the conversation about law by sponsoring initiatives that would include the world's great leaders and thinkers. To meet this commitment, NYU Law School Dean John Sexton and Faculty Chair of the Global Law School Program, Norman Dorsen, reached out to the White House and other world leaders. The result: these two conferences.

"We strive to prepare our students for a world that is increasingly interrelated and interdependent," said Dean Sexton. "One way to accomplish this goal is to bring the real world to our students. This conference is a continuum of initiatives sponsored by the global law school initiative in which we engage and educate our students by persistently transcending the boundaries between the academy and the world they will enter."

In keeping with this goal, twenty students were chosen by lottery from a pool of applicants who wrote essays on how attending the conference would enhance their educational experience and objectives. "The opportunity to travel to Florence far exceeded any expectation I ever had about law school. Clearly, NYU has sought to provide its students with a vast array of experiences that extend beyond the classroom. As part of the Florence contingency, not only were we learning about the international political process, we were partaking in it too," said Chris Belline (LL.M.'00). ■



(Front, l-r): Paul Francis ('80), Rafiq Kalam Id-Din ('00), Lester Pollack ('57), Thomas Brome ('67), and Professor Norman Dorsen (Back, l-r): Dean John Sexton, James Rogers, Dwight Opperman, Jerome Kern ('60), Ernest Stempel (LL.M.'48, J.S.D. '51), Anthony Welters ('77), NYU President L. Jay Oliva, and Alfred Engleberg ('65)

NYU School of Law and Library of Congress Celebrate the Library's Bicentennial

*"International law is part of our law," declared the Supreme Court in *The Paquete Habana*, decided in 1900. Federal and state judges have accomplished this integration of international and domestic law in fits and starts until now, when what passed for dictum has become a significant part of American jurisprudence.*



(L-r): James Billington, Librarian of Congress; Senator Orrin Hatch; Chief Justice William Rehnquist; Professor Norman Dorsen; Dean John Sexton; and Prosser Gifford, Director of Office of Scholarly Programs at the Library of Congress

Chief Justice William Rehnquist – a jurist not known for an “international” perspective – acknowledged the transformation and globalization of American law at the opening of a major conference convened by the Law School and the Library of Congress to celebrate the Library’s Bicentennial. The chief justice volunteered that the elevated status of international institutions demands a better understanding of international law in American courtrooms.

The four-day conference divided between Washington and New York City included seven panel discussions and two plenary sessions, each addressing variations on the broad theme of “Democracy and the Rule of Law in a Changing World Order.” Judges,

legislators, and legal experts representing twenty-one countries (many of them drawn from NYU’s Global Law Faculty) participated. In a sign of the times, computer users could watch a live broadcast of the entire event online and the Law School has stored the recordings in a digital archive available on the Internet (see related story, page 53). “The participants in the conference were an extraordinary group of people,” noted Prosser Gifford, director of scholarly programs at the Library, who helped plan the event. “Every one of them brings a range of personal experience.”

Justices Sandra Day O’Connor, Anthony Kennedy, and Ruth Bader Ginsburg left their chambers at the Court to take part in

several sessions. And Justice Stephen Breyer joined Chief Justice Rehnquist in addressing those in attendance at formal dinner receptions in Washington and New York. John Walker, Jr., Judge of the United States Court of Appeals for the Second Circuit, moderated a panel on human rights; Chief Judge Harry Edwards, his counterpart on the United States Court of Appeals for the District of Columbia Circuit, led a session on corporate governance in the global economy. And the distinguished American judges were joined by leading judges and scholars from around the world.

The idea for the joint symposium was developed several years ago. “In early 1998 the Library of Congress asked us to discuss the possibility of working with NYU School of Law to organize an international conference to commemorate the Library’s bicentennial year,” explained Professor Norman Dorsen, faculty chair of NYU’s Global Law School Program. “Library leaders knew of the Global Law School Program and they had concluded that the Law School would be the best partner for this important event,” he said.

The symposium forced the judges and scholars who participated to rethink the role of law in a transforming global society. “American judges and scholars have a lot to learn from people in other countries,” said Dorsen, reflecting on the symposium’s theme.

“Ultimately, that’s what the Global Law School Program is all about,” he said. “It was designed to alter legal education by bringing people and concepts from other countries into our classrooms and into the fabric of our thinking.”

“This conference ratifies a modern revolution in the law – a revolution that we call globalization,” noted Justice Breyer in an address to conference participants and students gathered in the Law School’s Lipton Hall. “Today the interaction of national and transnational law, along with the development of new transnational legal institutions, exerts influence upon almost every legal subject,” said Breyer.

“The job before us – as nations increasingly emphasize the rule of law and the role of the judge – is to try to transfer knowledge from one nation to another, so that, despite cultural, historical, or institutional barriers, we can create fairer, more effective judicial systems, including safeguards of institutional integrity where they are now



(L-r): Justice Sandra Day O'Connor, Professor Hisashi Owada, and Professor Philip Allott addressed transnational justice and national sovereignty.



(L-r): NYU's Professor Thomas Franck, Justice Anthony Kennedy, and Judge Rosalyn Higgins participated in a plenary session on democracy, legitimacy, and the rule of law.



Justice Stephen Breyer chats with Dean Sexton and students before delivering his speech on the globalization of law.

Democracy and the Rule of Law in a Changing World Order

Welcome

James H. Billington, Librarian of Congress
Norman Dorsen, NYU School of Law
Rubens Medina, Law Librarian of Congress

Session 1: Transnational Justice and National Sovereignty

Moderator: Anne-Marie Slaughter
 Harvard Law School
Commentator: Hisashi Owada, Japan Institute of International Affairs & NYU Global Law Faculty
Papers: Philip Allott, Trinity College (Cambridge) & NYU Global Law Faculty
Sandra Day O'Connor, Associate Justice, U.S. Supreme Court
Bruno Simma, Ludwig-Maximilians-Universität (Munich) & University of Michigan

Session 2: Roles of Women: Norms and Culture

Moderator: Ruth Bader Ginsburg, Associate Justice, U.S. Supreme Court
Commentator: Eva Cantarella, University of Milan & NYU Global Law Faculty
Papers: Kenneth Karst, UCLA
Ellen Gracie Northfleet, Judge, Fourth Regional Federal Tribunal, Porto Alegre, Brazil
Azizah Y. al-Hibri, University of Richmond

Plenary Session A: Democracy, Legitimacy, and the Rule of Law

Moderator: Anthony Kennedy, U.S. Supreme Court
Panelists: Thomas Franck, NYU School of Law & President, American Society of International Law
Daniel Fung, Des Voeux Chambers, Hong Kong
Rosalyn Higgins, Judge, International Court of Justice

Session 3: Political Status and Democracy in Multiethnic and Multiracial States

Moderator: Stanley N. Katz, Woodrow Wilson School, Princeton University
Commentator: Ann Elizabeth Mayer, The Wharton School, University of Pennsylvania
Papers: Jaydeva Uyangoda, University of Colombo (Sri Lanka)
Kogila Moodley, University of British Columbia
Nadezhda Mihailova, Minister of Foreign Affairs (Bulgaria)

Session 4: Natural Resources and the Environment: Individual Versus Community Interests

Moderator: Koichiro Fujikura, Tezukayama University (Nara, Japan) & NYU Global Law Faculty
Commentator: Sidney Draggan, U.S. Environmental Protection Agency
Papers: Yuri Kostenko, Ukrainian Parliament
Richard Stewart, NYU School of Law
Antonio Azuela, Attorney General for Environmental Protection (Mexico)

Plenary Session B: Can We Use Law To Hold the Past to Account?

Moderator: Prosser Gifford, Office of Scholarly Programs, Library of Congress
Panelists: Shlomo Avineri, Hebrew University, Jerusalem
Alex Boraine, NYU School of Law & Vice Chairperson, South African Truth and Reconciliation Commission
Luis Moreno Ocampo, Moreno Ocampo Abogados, Buenos Aires & Buenos Aires University Law School

Session 5: Religion, Culture, and Governance

Moderator: Jean Bethke Elshtain, University of Chicago
Commentator: Stephen Holmes, NYU & Princeton University
Papers: Inder Kumar Gujral, Indian Parliament & former Prime Minister of India
Nur Vergin, Istanbul University
Alexander N. Domrin, Institute of Legislation and Comparative Law, Moscow & NYU Global Law Faculty

Session 6: Corporate Power, National Sovereignty, and the Rule of Law in a Global Economy

Moderator: Harry T. Edwards, Chief Judge, U.S. Court of Appeals for the D.C. Circuit
Commentator: Robert Pitofsky, Chairman, Federal Trade Commission
Papers: Daniel Tarullo, Georgetown University
Michael John Trebilcock, University of Toronto & NYU Global Law Faculty
Ko-Yung Tung, Vice President & General Counsel, World Bank
Fali Nariman, Indian Parliament & The Bar Association of India (paper presented in his absence)

Session 7: The State and Human Rights

Moderator: John M. Walker, Jr., Judge, U.S. Court of Appeals for the Second Circuit
Commentator: Ratna Kapur, Cleveland-Marshall College of Law & Centre of Feminist Legal Research (New Delhi)
Papers: Philip Alston, European University Institute (Florence) & NYU Global Law Faculty
Robert Badinter, French Senator; former President of the French Constitutional Court; University of Paris; & NYU Global Law Faculty
Andras Sajó, Central European University (Budapest) & NYU Global Law Faculty

lacking," said Breyer. Then he asked: "What could be more exciting for an academic, practitioner, or judge, than the global legal enterprise that is now upon us?"

This sense of excitement animated the entire proceedings – beginning with the first panel, which tackled the escalating conflicts between principles of transnational justice and national sovereignty.

Anne-Marie Slaughter, a Harvard Law School professor who was visiting NYU for the semester, launched the discussion. "Although we talk about international law, international institutions, the global rule of law," said Slaughter, "it is to national lawyers, national courts, and national legal systems as much as to international institutions that we must turn for development of the concept."

"To put international society now under the rule of a true international law, we have to place the common interest of all humanity at the root of international law," suggested Philip Allott, a Cambridge professor and member of NYU's Global Law Faculty. "That means turning international law upside down."

Justice O'Connor presented a paper on international and national approaches to legal accountability in countries undergoing transition from authoritarian regimes to democratic ones. In these societies, frequently there is a tension between the international obligation to prosecute certain crimes and the countervailing domestic interests in nurturing the shift to representative government by foregoing prosecution.



Justice Ruth Bader Ginsburg moderated the session on the role of women.

the discussion by arguing that the efforts of the women's movement, translated into law, contributed vitally to women's widened choice of professional and social roles. Ellen Gracie Northfleet, a federal judge from Pôrto Alegre, Brazil, contrasted the progress achieved by feminists in developed and developing societies. Azizah Y. al-Hibri, of the University of Richmond, then followed with a discussion of Islamic feminism and the influences of religion and culture on the women's movement. Eva Cantarella, professor of Roman law at the University of Milan and member of NYU's Global Law Faculty, commented on the papers.

The symposium had a highly interdisciplinary flavor. NYU Professor Richard Stewart, a specialist in environmental law, joined experts and politicians from Japan, Mexico, and Ukraine in a roundtable discussion on comparative environmental policy

"Library leaders knew of NYU's Global Law School Program and they had concluded that the Law School would be the best partner for this important event."

Bruno Simma, a German law professor and member of the United Nations International Law Commission, followed with a historical overview of international adjudication and reasons why the United States should submit to judicial settlement of global disputes – despite its political reluctance to do so.

The next panel, moderated by Justice Ruth Bader Ginsburg, turned to issues of gender in law and culture. The three panelists typified the conference's geographic diversity. Kenneth Karst of UCLA began

and the regulation of natural resources. Professor Stanley N. Katz of Princeton's Woodrow Wilson School moderated a discussion analyzing democracy in multiethnic and multiracial states that featured four panelists from widely different fields: a researcher from the University of Pennsylvania's Wharton School, a Sri Lankan political scientist, a professor of educational studies from Vancouver, and Bulgaria's foreign minister.

Another session addressed questions of church and state from a global perspective, with Jean Bethke Elshtain, political sci-

entist from the University of Chicago, moderating the discussion. In that panel, NYU Professor Stephen Holmes commented on papers presented by Inder Kumar Gujral, a member of the Indian Parliament and former prime minister of India; Nur Vergin, political scientist from Istanbul University; and Alexander N. Domrin, senior research fellow at Moscow's Institute of Legislation and Comparative Law and member of the NYU Global Law Faculty.

Two plenary sessions addressed broader conceptual issues associated with the conference's theme. Justice Kennedy chaired the first session, which NYU Professor Thomas Franck, the outgoing president of the American Society of International Law, began by stressing that voters, legislators, and judges often work at cross purposes; their efforts must be harmonized in order to achieve the goal of good governance. Justice Rosalyn Higgins, the first female judge on the International Court of Justice in the Netherlands, offered insights on Franck's argument garnered from her experience.

Prosser Gifford began the second plenary session with the deceptively simple question: "Can we use law to hold the past to account?" Providing answers were Shlomo Avineri, professor of political science at Jerusalem's Hebrew University; Luis Moreno Ocampo, professor at Buenos Aires University Law School; and NYU's Alex Boraine.

Boraine, director of the Law School's Project on Transitional Justice and Vice-Chair of South Africa's Truth and Reconciliation Commission, framed his answer in legal and moral terms. "To ignore the past is to perpetuate victimhood," he said. "For the sake of justice and the restoration of dignity to victims, there must be accountability for the past."

Moreno Ocampo, a former prosecutor in the trials of Argentina's military junta, gave his perspective of the efficacy of strategies for dealing with the past. "As a prosecutor in the trials of those responsible for state-sponsored disappearances, I realized the limits of using a criminal justice system to prosecute gross violations of human rights," he said. "Dealing with this past requires remedies beyond criminal prosecution."

The first conference session in New York discussed the role of corporations in the global economy and the implications of expanding corporate power for conceptions of national sovereignty. Professor John Michael Trebilcock of the University of

Week-long Conference Broadcast Live Via the Internet

Participants in the joint NYU Law-Library of Congress Bicentennial Conference were forced to commute between Washington and New York. Audience members had an easier option – they tuned in online. “Because we realize that many who would like to attend this conference are unable to do so, we are cybercasting it live,” explained James Billington, Librarian of Congress.

What better way to discuss democracy in the twenty-first century than with twenty-first century technology?

Computer users around the world caught the live “webcast” of all panels. In Vanderbilt Hall, students gathered around terminals in Golding Lounge to watch the event between classes; others watched on computers in the library and on laptops in their rooms in D’Agostino and Mercer. The videos are archived for future viewing on the Law School (www.law.nyu.edu) and Library of Congress (www.loc.gov) web sites.

“Thomas Jefferson believed in an informed citizenry. That’s a responsibility we take seriously at the Library of Congress,” said Billington. And one the Law School has taken to heart as well. “We wanted the broadest impact possible,” explained NYU’s Norman Dorsen.

“On our first day, we had over 2,500 hits on the web site,” said Prosser Gifford, director of scholarly programs at the Library. A “hit” represents a visit to the site by a computer user. Visitors were directed to the webcast via a special link on the Law School’s homepage.

Participants were as fascinated as the webcrawlers. Ellen Gracie Northfleet, a federal judge from Brazil who spoke at the conference, saw the new technology as adding a dimension. “It can turn a conference into a conversation, involving people from all parts of the world,” she said.

Alex Boraine, director of the Law School’s Project on Transitional Justice, saw great potential in televising conferences on the Internet. “I was on a panel in which the moderator took a question from a computer user in Africa, and the next one from another part of the world. It is an amazing technology.”

The Law School web site boasts a sizeable video archive, including panel discussions from previous conferences; segments from *Inside the Law*, a public television series that has taped programs in Greenberg Lounge; and a virtual tour of the school for prospective students. This year, NYU even broadcast commencement exercises live on the web.

“We are the Global Law School. We want people everywhere to be able to see the events we put on,” said Toni Fine, Associate Director of the Global Law School Program.

Future webcasts will allow the school to capitalize on its recent capital improvements, including “smart classroom” technology enabling video teleconferencing, Internet access in dorms, and recent upgrades of computers and monitors throughout the library.

Toronto and a member of the NYU global law faculty and Georgetown’s Daniel Tarullo made presentations and Robert Pitofsky, the chairman of the U.S. Federal Trade Commission, provided insights and comments on each of the papers.

Trebilcock took exception to recent criticisms of the World Trade Organization that sparked riots at the group’s meeting in Seattle. He argued that the benefits of trade liberalization outweighed the disadvantages heralded by detractors. Wage disparities and other problems associated with the global marketplace are the product of technological differences between regions, not the liberalization process itself. Interdependence is the watchword of the new era, Trebilcock explained. Self-sufficiency is illusory. “Canada should try growing citrus

fruits, tea, and coffee in the winter,” Trebilcock joked, “and South Africa should attempt to grow wheat.” The impossibility of producing all desirable goods in one country necessitates the internationalization of trade.

The final session focused on the role of the state in advancing human rights norms. The panel featured four members of the Global Law Faculty: Philip Alston, professor at the European University Institute in Florence, Italy; Andras Sajó, professor at Central European University in Budapest; French Senator Robert Badinter, former president of the Conseil Constitutionnel in Paris; and Ratna Kapur, Centre of Feminist Legal Research, New Delhi.

“Human rights brings accountability,” Alston observed, as he related his experiences working with economic rights in the

United Nations and argued that transnational economic actors – including the World Bank and the International Monetary Fund – should be bound by human rights standards. “Currently,” he said, “corporations and other non-state entities escape the system of safeguards for human rights that constrain government behavior.”

Ko-Yung Tung, general counsel for the World Bank, had defended transnational businesses in the previous panel. “The World Bank is unequivocally dedicated to the rule of the law,” he said. “The content of the rule of law may be in the eye of the beholder, but our central mission is the fight against poverty.” Tung explained that his institution has developed a comprehensive system to ensure compliance with this mandate.

Justice Dieter Grimm of the German Constitutional Court, who was in the audience, wondered if this set of standards could be applied universally. “There are some societies where individualism is not the highest aim, and this principle may affect the different fundamental rights” to which these societies accord the most importance. His comments ended with a challenge for the panelists: “Do we have the right to impose our interpretation of these fundamental rights on those cultures?”

In closing the conference Dean John Sexton said: “This has been a remarkable week of partnership and creativity. We didn’t want rhetoric. We wanted a rigorous discussion that will contribute more than casually to finding solutions. And that is exactly what has happened.”

There was widespread sentiment that the Dean had it right. The animated discussions away from the lights and microphones provided powerful evidence that the symposium had achieved its ambitious goal. One informal, unscripted moment illustrates. On the last of the four days, Senator Badinter sat at a table in Lipton Hall, going over the text of his presentation. Justice Grimm offered some suggestions. NYU’s Professor Ronald Dworkin nodded approvingly from across the table. Badinter raised another issue – in French, no less – to which Justice Breyer offered his insights. The four men drifted out of the hall to catch the afternoon session, still engrossed in their discussion.

The *Congressional Quarterly Press* will publish a volume of essays submitted by participants, edited by Professor Norman Dorsen and Prosser Gifford. ■

European and American Justices Meet at NYU

NYU School of Law co-hosted with Cardozo Law School the first-ever official visit by members of the Court of Justice of the European Communities to the United States to meet with three U.S. Supreme Court Justices.



(Front row, l-r): Justice Anthony Kennedy, President David A.O. Edward of the IVth and Vth Chambers, NYU Dean John Sexton, Justice Sandra Day O'Connor, Judge Fidelma O'Kelly Macken, Justice Stephen Breyer, Registrar Roger Grass, and Cardozo Dean Paul Verkuil. (Back row, l-r): Professor Michel Rosenfeld, President Leif Sevón of the 1st Chamber, Tom Susman, Judge Jean-Pierre Puissechet, Judge Claus Gulmann, Advocate General Francis Jacobs, Advocate General Philippe Léger, Thomas Phillips, and First Advocate General Nial Fennelly.

This historic exchange brought the justices to Washington Square to continue a discussion begun two years earlier in Luxembourg concerning current European and U.S. constitutional issues. Participants from the U.S. Supreme Court included Justices Stephen Breyer, Anthony Kennedy, and Sandra Day O'Connor. Members of the Court of Justice of the European Communities included Judges David A.O. Edward, President of the IVth and Vth Chambers; Leif Sevón, President of the 1st Chamber; Nial Fennelly, First Advocate General; Francis Jacobs, Advocate General; Claus Gulmann; Fidelma O'Kelly Macken; Jean-Pierre Puissechet; Philippe Léger, Advocate General; and Roger Grass, Court Registrar.

An afternoon session opened the conference with a candid discussion among the

justices and judges of the major issues before the two courts.

After introductions by Cardozo Dean Peter Verkuil and welcoming remarks by Justice Breyer and Judge Edward, Judge Puissechet gave a detailed talk on the development of European Community law. Judge Fenelly followed Puissechet with a talk on the principles of proportionality and subsidiarity, the European equivalent of Federalism.

At the conclusion of these speeches, the panel was invited to ask questions and a lively dialogue ensued between the European Judges and U.S. Justices. At some point during this question-and-answer dialogue, Justice O'Connor compared Fenelly's discussion of subsidiarity with the problems of Federalism and dual sovereignty faced by

the Supreme Court. Justice Kennedy added his thoughts on this issue, noting, "A Constitution cannot exist without an ongoing consensus of its people."

The shift in focus of the discussion to U.S. issues was completed by a brief address from Justice Breyer. He stated that the problems U.S. Justices face in interpreting many American statutes parallel the difficulties the European Court faces in interpreting the treaties that create their authority.

The second day of the conference included a number of sessions with the European judges in conversation with faculty members from NYU and Cardozo Law Schools concerning specific issues facing the court. The first session focused on antitrust law and included Professors Eleanor Fox of NYU Law and John McGinnis of Cardozo Law. Norman Dorsen, Faculty Chair of NYU's Global Law School Program, moderated the discussion.

McGinnis began by describing two recent trends in U.S. antitrust law, noting that they may provide a useful lesson for other nations. First, there has been a shift from a focus on corporate welfare to a focus on consumer welfare. This shift has led to a second development: The protection of consumer welfare is no longer based on government regulation but instead increasingly centers around market competition. According to McGinnis, the government lacks knowledge of whether a price is competitive or monopolistic. Government intervention has shrunk in recent years, and now it limits itself to addressing cartels and obvious monopolistic practices.

Fox offered a more modest view of what the United States has to offer. "There are places where the European Union's competition law has clear advantage over American law," she said.

Fox identified two models of competition law. One is the American model as outlined by McGinnis. The second model, the European Community competition law which began in 1957 with the creation of the E.C., centers around an integrated market in one overall system.

Fox proposed the idea of having a competition law that governs world trade, suggesting that the E.C. model is a move in this direction because it already governs multiple nations. "We now have greater opportunity for cross-fertilization from different systems," said Professor Fox.

The second session of the day examined environmental law, and featured Professors Richard Stewart of NYU Law and Michael Herz of Cardozo. NYU's Professor Richard Revesz moderated the discussion. Stewart began with a history of environmental law and the emerging structural and constitutional issues involved. "After thirty years, it is a mature field," he said.

In describing environmental law at the federal level, Stewart noted that statutes deal with three areas: pollution and waste control, natural resource management, and land use infrastructure development. States normally exercise parallel authority with the federal government except when there is no state statute to address an issue, the federal law applies. Also, a federal statute may override or limit a state regulation. However, states may impose additional regulations beyond those identified by federal law.

Herz further elaborated on the history of environmental law in the United States "In the period before 1970, for all intents and purposes, there was no federal environmental law or federal environmental regulation. Law then was based in property laws in that the environment was equated with property," he said.

Today, there are a number of standards for dealing with environmental matters. The dominant approach is the technology standard whereby some product or method is developed to correct or minimize a danger to the environment. The law mandating that cars be equipped with catalytic converters to reduce automobile emissions is an example of using the technology standard.

Herz suggested that in the future there will be a shift from command and control type regulation toward economic incentives. Also, we will see a greater integrated environmental management law as well as an increase in enforcement and compliance. Finally, Herz predicted that there will be more attention paid to risk assessment.

The conference closed with a session by NYU's Professor Yochai Benkler and Professor David Rudenstine of Cardozo Law School on privacy and the Internet. Michel Rosenfeld of Cardozo Law School ably moderated this panel.

Rudenstine began by stating that the Internet provides a threat to privacy unlike any that has existed before its widespread adoption, noting that there could be national legislation to protect privacy online. Yet while there is some support for this approach, there is even stronger opposition, especially within the Internet industry. "The industry desires self-regulation over legislation," he said.

Benkler argued that online privacy is not a case of Big Brother. "The Internet is about individual connections rather than a single entity engineering it from above. Information is decentralized," he explained.

In addition to the possible solutions of governmental versus industry regulation, Benkler added that technology can also provide tools for the individual to control and mask their personal information online. Benkler suggested that both personal autonomy and the broader societal effects must be considered when developing solutions to the threat of privacy. ■



(L-r): Judge Gulmann offers further elaboration on Judge Fennelly's remarks on proportionality and subsidiarity to Justice Kennedy.

Current European and U.S. Constitutional Issues

Session One: Major Issues Before the European Court of Justice and the U.S. Supreme Court

An open conversation among the judges and justices.

Session Two: Antitrust Law

Presenters:

Eleanor Fox, NYU Law

John McGinnis, Cardozo Law

Moderator:

Norman Dorsen, NYU Law

Session Two: Environmental Law

Presenters:

Michael Herz, Cardozo Law

Richard Stewart, NYU Law

Moderator:

Richard Revesz, NYU Law

Session Three: Internet Privacy

Presenters:

Yochai Benkler, NYU Law

David Rudenstine, Cardozo Law

Moderator:

Michel Rosenfeld, Cardozo Law

Members of the Court of Justice of the European Communities in Attendance

David A.O. Edward, President of the IVth & Vth Chambers

Leif Sevón, President of the Ist Chamber

Nial Fennelly, First Advocate General

Francis Jacobs, Advocate General

Claus Gulmann, Judge

Fidélma O'Kelly Macken, Judge

Jean-Pierre Puissechot, Judge

Philippe Léger, Advocate General

Roger Grass, Registrar

Justices of the U.S. Supreme Court in Attendance

Justice Sandra Day O'Connor

Justice Anthony Kennedy

Justice Stephen Breyer

Kosovo Commission Convenes at NYU School of Law

NYU Law played host to the Independent International Commission on Kosovo, which conducted both a public seminar and a private meeting of the Commission at the school this past winter. The Commission is charged with responsibility to analyze key developments prior to, during, and after the Kosovo war, including violations of human rights.



Justice Richard Goldstone, Commission Co-Chair

The Commission is sponsored by the government of Sweden and is co-chaired by Justice Richard Goldstone of the South African Constitutional Court and Carl Tham, secretary general of the Olof Palme International Centre, Sweden. "The idea to analyze objectively events in Kosovo is not for the purpose of apportioning blame," said Justice Goldstone, "but rather for seeing what lessons there are to be learned for the next century."

The event at the Law School was the Commission's first public forum. It was coordinated by Dr. Alexander Boraine, Director of the Global Law School Program's Project on Transitional Justice.

Subsequent meetings took place in Hungary, Italy, and South Africa. Then, the Commission returned to NYU – this time at Villa La Pietra in Florence – (the report on the Florence meeting appears on the opposite

page). In naming NYU as the venue for the first and last meeting, Goldstone remarked: "I can't think of a more appropriate place to launch these discussions than NYU School of Law. We welcome the involvement of faculty and particularly of students."

NYU was well represented at the December event. Professors Benedict Kingsbury and Stephen Holmes participated in the discussions, as did several other members of the faculty. And students played an integral role, serving as rapporteurs for each of the discussion groups. Students also attended the public meetings of the Commission, including a day of break-out sessions on the various topics.

The Commission's seminar covered five major topics: the origins of the Kosovo conflict, including economic and political factors; the impact of humanitarian organizations, the media, and other groups; the human rights and humanitarian violations that occurred in Kosovo; the role of the United Nations and other international organizations, including the military intervention by NATO; and the impact of the crisis on neighboring countries. Each topic was discussed by a separate group of participants, and reports were presented and discussed at a plenary session.

Members of the commission attending the conference, other than Goldstone and Tham, included Akiko Domoto, a leading Japanese parliamentarian; Richard Falk, professor at Princeton University's Woodrow Wilson School; Michael Ignatieff, Canadian intellectual and author; Mary Kaldor, director of the Center for the Study of Global Governance at the London School of Economics; Martha Minow, professor at Harvard Law School; and Jacques Rupnik,

NYU Students Aid Kosovo War Crimes Investigation

John Cerone (LL.M.'99) and Anne Rubesame ('00) spent several months in Kosovo as international legal experts aiding the war crimes investigation effort. They were part of the Humanitarian Law Documentation Project of the International Crisis Group. The project aimed to support the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) through the collection and standardization of information relating to serious violations of humanitarian law in Kosovo. The project is designed to facilitate the identification of individual witnesses to be interviewed by ICTY investigators; assist in efforts to reconstruct the course of events in Kosovo; and provide a comprehensive overview of violations of international criminal law under the jurisdiction of the ICTY.

A secondary aim of the Project was to draft a substantive report that explains the legal provisions applicable to the conflict and that illustrates the types of crimes that have been committed. All members of the Project agreed that it was extremely important to raise the public's awareness of the atrocities that have been committed. The report was issued at the beginning of June 2000.

The Project had a duration of eight months. Within those eight months, approximately 2,500 witness statements were taken and entered into the database. At any given time the Project employed at least twenty international staff members and fifty local staff members.

John Cerone is presently working as a Human Rights Officer for the OSCE as part of the United Nations Mission to Kosovo. Anne Rubesame is graduating in December and is serving as a legal adviser to the Bosnian Mission to the United Nations on all matters relating to the International Criminal Court, a position that she held for the last two years.

scholar at the Paris-based Center for International Studies and Research. Diane Orentlicher, director of a war crimes research group at American University, Washington D.C., facilitated the plenary discussion.

A report detailing the commission's findings is expected in October 2000. ■

...and Reconvenes at NYU's Villa La Pietra in Florence

The Kosovo Commission spent five days this summer at NYU's Villa La Pietra in Florence. The Villa has played host to many illustrious guests. Its splendor seems suited to those guests who, like Nancy Mitford, Graham Greene, and Gore Vidal, worked from artistic inspiration.

The Kosovo Commission had, perhaps, less need for creative inducement. It did, however, require seclusion and quiet at this important meeting. Villa La Pietra offered just that. Previous meetings of the Commission had focused primarily on the intended scope of the report and meetings and research which members would need to undertake. At Florence, after months of research, interviews in the field, and two seminars which allowed the Commission to test and sharpen its conclusions (one in December 1999 at NYU School of Law and another in April 2000 at the Central European University in Budapest), members were ready to discuss and debate their submissions. Discussions covered the origins of the Kosovo conflict, efforts undertaken to avert the impending humanitarian crisis, the legality of the NATO bombing, regional effects of the conflict, and the state of Kosovo today under United Nations authority.

The sunshine, idyllic Tuscan setting, and glorious food and facilities did not, surprisingly, impair concentration. Commission members agreed that the importance of the meeting at La Pietra and the work produced there cannot be overestimated. Many members arrived admittedly apprehensive about the fragmented state of the report, but during the week's meeting, the report, visibly took shape. As a more coherent sense of the contents developed, Commission members felt themselves better placed to formulate the lessons to be learned from the conflict in Kosovo. According to Michael Ignatieff, Commission member, the meeting at La Pietra represented "the moment we actually got a report. We arrived at La Pietra without a report and we leave with one."

The Florence meeting also provided the Commission with time to plot the way ahead. The Commission's final meeting and

seminar at the University of the Witwatersrand, South Africa in August – focusing on the lessons of Kosovo for conflicts in Africa and Asia – provided Commission members one final chance to make and review edits. Kofi Annan, U.N. Secretary-General will be presented with the Report at the end of October. The Commission, however, will remain constituted until the end of the year – hosting seminars in various regions once the report is published to discuss its findings.

As the meeting in Florence drew to a close, Commission members were quick to acknowledge the enormous contribution made by NYU to the Commission's work. Justice Richard Goldstone, the Commission's co-chairman, said NYU "has provided the Commission with two wonderful opportunities. The first, the seminar in December, allowed us to reach many scholars and authorities whose insights have been tremendously valuable. The second, this meeting in Florence, provided us with a retreat in which we could place those insights in a meaningful, coherent report." ■

Independent International Commission on Kosovo Villa La Pietra, Florence Meeting

Commission Chair

Richard Goldstone, South Africa

Commission Co-chair

Carl Tham, Secretary General, Olof Palme International Centre, Stockholm, Sweden

Members

Grâce d'Almedia, University of Benin
Republic of Benin

Dr. Hanan Mikhail-Ashrawi, Secretary General,
Palestinian Initiative for the Promotion of Global
Dialogue and Democracy, Palestine

Senator Akiko Domoto, House of Councillors, Japan

Richard Falk, Princeton University, USA

Ambassador Oleg Grinevsky, Research Fellow,
Stanford University, USA, Russia

Dr. Michael Ignatieff, Canada

Mary Kaldor, Director, Centre for the Study of Global
Governance, London School of Economics, England

Martha Minow, Harvard Law School, USA

Jacques Rupnik, Centre d'Etudes et de Recherches
Internationales, France

Dr. Theo Sommer, Publisher, Die Zeit, Germany

Jan Urban, independent publisher, Czech Republic





NYU Hosts AALS International Conference at Villa La Pietra

NYU School of Law and its Global Law School Program hosted a four-day conference at the Villa La Pietra in Florence, Italy, which brought together fifty legal educators from thirty different countries to consider new forms of international cooperation, including the possible creation of a new international organization.

The conference was part of the centennial celebration of the Association of American Law Schools (AALS) and represents a significant new international presence for the Association. At the conclusion of the conference, Carl Monk, executive director of the Association, was asked to appoint several working groups to make recommendations for future activities.

Dean John Sexton of New York University School of Law, a past president of the Association, chaired the Conference Planning Committee, which consisted of faculty representing different countries and legal systems from around the world. Sexton said, "This conference demonstrates that law can no longer be studied in a vacuum and that legal educators throughout the world seek a greater understanding of other cultures and legal systems. New York University School of Law has a long-standing commitment to global legal education and was pleased to host the conference."

All conference participants prepared papers about their own legal systems. The papers covered topics such as financing of legal education; who students and faculty are and how they are selected; the curriculum structure in different countries; and

how cooperation might occur among different legal systems. The paper of NYU Professor Norman Dorsen, who attended the conference, described the NYU initiative and its implications for legal education in the United States and elsewhere. The papers of the conferees will be published in the Association's *Journal of Legal Education*.

As long ago as 1928, Dean John Henry Wigmore recognized the need for international cooperation in legal education. Several participants addressed concrete problems this will raise, including the need to avoid a global curriculum that will be ghettoized

for a small number of students and the disparate opportunities for Internet and other electronic training for law schools with sharply different levels of economic resources.

The conferees regarded faculty and student exchanges as desirable, but they recognized problems presented by calendar conflicts, different legal systems and pedagogical approaches, and varied salary and tuition levels. In addition, several participants stressed the importance of competency in several languages in facilitating exchanges and, more generally, in deepening the understanding of other legal systems.

The conferees also considered the bearing on legal education of different cultural and political traditions, the role of bar associations and other regulatory bodies, and the degree to which some conception of the rule of law has taken hold in a given country. The discussion related these issues to the capacity of lawyers to influence public events and, conversely, to the public attitude toward lawyers and the legal system.

The conference also addressed questions raised by the presence of minority religions and racial and ethnic groups, and the cognate problem of providing access to legal services to disadvantaged sectors of society. This part of the proceedings, as well as others, took note of the vast disparities in economic resources that heavily affected the ability of law schools to provide quality education, global or otherwise.

The final session of the conference focused on different institutional forms in which international cooperation might take place and how these would fit with existing professional and public institutions. The working groups are considering these and other options as a basis for recommendations to the larger group. ■



(L-r): Maximo Carvajal Contreras, James White, and Roger Burrigge explore a global curriculum.

AALS International Conference of Legal Educators, Florence Participants



Legal educators from around the world gathered at NYU's Villa La Pietra this summer to explore international cooperation in the teaching of law.

Nadia de Araujo

Pontificia Universidade Catolica, Brazil

Maximo Carvajal Contreras

Oficina Afeidal/Anfade, Mexico

Armando Cesar Dimande

Universidade Eduardo Mondlane, Mozambique

Japp Doek

Vrije Universiteit Amsterdam, The Netherlands

Norman Dorsen

NYU School of Law, United States

Yoseph Edrey

Haifa University, Israel

Lawrence Foster

University of Hawaii, United States

Carlos Peña Gonzales

Universidad Diego Portales, Chile

Claudio Grossman

American University, United States

Kebreab Habte-Michael

University of Asmara, Eritrea

Norio Higuchi

University of Tokyo, Japan

Phillip Iya

University of Fort Hare, South Africa

JBK Kaburise

Vista University, South Africa

Mary Kay Kane

University of California, United States

Roberto MacLean

Banco Interamericano de Desarrollo, Peru

Merlin Magallona

University of Philippines, Philippines

Elliott Milstein

American University, United States

N.L. Mitra

National Law School of India University, India

Carl Monk

Executive Director, AALS, United States

J.M. Mössner

Osnabrück University, Germany

H.W.O. Okoth-Ogendo

University of Nairobi, Kenya

Antonio Garcia Padilla

University of Puerto Rico, Puerto Rico

Stephen Parker

Monash University, Australia

Louis Perret

University of Ottawa, Canada

Jiang Ping

China University of Law and Politics, China

Monica Pinto

Universidad de Buenos Aires, Argentina

Harry Prince

AALS, United States

Frank Read

South Texas College of Law, United States

John Sexton

NYU School of Law, United States

Anna Williams Shavers

University of Nebraska, United States

Ximena Moreno de Solines

Pontificia Universidad Catolica del Ecuador, Ecuador

Sang-Hyun Song

Seoul National University

Sonia Picado Sotela

Congreso de la República, Costa Rica

Walter Stoffel

Université de Fribourg, Switzerland

Rennard Strickland

University of Oregon, United States

Sutee Supanit

Thammasat University, Thailand

Kent Syverud

Vanderbilt Law School, United States

Antônio Cançado Trindade

President, Inter-American Court of Human Rights,
Brazil

Frans Vanistendael

Katholieke Universiteit Leuven, Belgium

Jose Francisco de Mata Vela

Universidad Mayor de San Carlos, Guatemala

Anna Veneziano

International Institute for the Unification of
Private Law, Italy

Robert Walsh

Wake Forest University, United States

Judith Wegner

Carnegie Foundation for the Advancement of Teaching,
United States

James White

American Bar Association and Indiana University,
United States

Gregory Williams

Ohio State University College of Law, United States

Adrien Katherine Wing

University of Iowa, United States

Margaret Woo

Northeastern University, United States

Marilyn Yarbrough

University of North Carolina, United States

Stephen Zamora

University of Houston Law Center, United States

Wu Zhipan

Beijing Law School, China



Law School Holds International Alumni Conference in Dublin

Alumni from around the globe gathered in Dublin, Ireland last fall with faculty, students, and friends of NYU Law for the Third International Alumni Conference. Beyond providing a setting to enjoy three days of Ireland's rich culture and history, the Conference served as a forum for the exchange of ideas, perspectives, and experiences in the legal profession – particularly regarding the global economy.

Following a welcome reception and dinner at the Hibernian United Service Club, the intellectual fare of the Conference began with welcoming remarks from Provost Thomas Mitchell of Trinity College and NYU's Dean John Sexton.

The first panel discussion, moderated by NYU Law Professor Richard Stewart, examined the increasing internationalization of environmental laws and policy, with special attention paid to how regulatory efforts aimed at solving environmental problems must confront economic integration at both the regional and global levels. The panel focused on environmental issues being addressed in Europe and the Americas, as well as at the global level.

Participants on the environmental panel included Caitlin Ni Fhlaitheartaigh, Legal Advisor in the Attorney General's Office of Ireland; Philippe Sands, NYU Global Law Faculty member and Professor of International Law at the University of London; and Yvonne Scannell, Professor of Law at Trinity College.

In a second panel, NYU's Professor Christopher Eisgruber joined Visiting



Chief Judge Harry Edwards, United States Court of Appeals for the District of Columbia Circuit, and NYU's Professor Linda Silberman

Professor Richard Pildes for a discussion of comparative constitutional law in this age of constitutionalism. As newly created democracies reach unprecedented numbers, and as an international culture of constitutionalism emerges from more long-standing regimes the world is faced with profound questions of theory and practice. Eisgruber and Pildes examined such issues as what constitutional regimes might learn from one another, what the general experience of constitutionalism across diverse countries sug-

gests about the general aims and limits of constitutionalism, and forecasted the problems constitutional courts are likely to face in the new millennium.

NYU's Professor Linda Silberman and Chief Judge Harry T. Edwards of the United States Court of Appeals for the District of Columbia Circuit led participants through an exploration of litigation and dispute resolution in a global world in the third panel. Discussion centered around two general themes: on the comparative front, the use of alternative dispute resolution mechanisms for the disposition of civil rights claims in U.S. federal courts and human rights petitions at the European Court of Human Rights; and on the transnational side, the present effort at The Hague to negotiate a world-wide convention for jurisdiction and judgments.

The final panel, moderated by Professor William Binchy of Trinity College Law School, examined human rights in Ireland. Speakers on this panel offered insights into recent approaches to resolve national political, ethnic, and religious conflicts, noting how European values are playing an important role in the development of thinking in this regard. Panelists included Philip Alston, Global Law Faculty member and Professor of International Law at the European University Institute; Brice Dickson, Chief Commissioner of Northern Ireland Human Rights Commission; and Dr. Gerard Hogan of Trinity College Law School.

This day of rigorous intellectual exchange ended with a reception and gala dinner at The Royal Hospital Kilmainham, which was built in the 17th century. There, NYU alumni were entertained by Dublin's Senator David Norris, member of the Seanad Eireann, who offered a Joycean monologue, interspersed with his own unique brand of wit and humor.

The evening concluded with alumni happy to have spent a weekend together in Ireland – especially on the historic day when, for the first time in Irish history, a power-sharing coalition of unionists, nationalists, and republicans stood ready to take office in a new Northern Ireland Executive. The events, unfolding around the participants even as the conference was taking place, seemed to renew everyone's hope that we may be able to bridge our differences and find answers to the many global questions we face in the new century. ■

Second International Conference on Constitutionalism Meets at NYU School of Law

The conference on Constitutional Adjudication and Democracy from a Comparative Perspective, held at NYU this past spring, was the sequel to a similar conference, held last year in Rome. Both seminars were co-sponsored by the Law School and the Olivetti Foundation, and both were designed to examine developing models of constitutional adjudication in France, Germany, Italy, and Spain in light of the U.S. experience.

The participants included an all-star cast of scholars from, besides NYU, the Universities of Malaga (Spain), Bielefeld (Germany), Paris X (France), Pompeu Fabra (Spain), Yale, and Georgetown (USA). It also included leading jurists from France, Italy, and Germany.

A novelty of this year's seminar was the fact that participants were sent beforehand, and asked to read, an anthology of ten pertinent essays, some of them authored by members of the seminar, others by equally eminent jurists and scholars.

Careful attention was given to the theoretical framework within each country for determining the limits of constitutional adjudication by unelected courts, examined in light of some specific issues that constitutional courts frequently address. The objective was to examine the boundaries where judicial competence bumps up against popular politics, and to explore how judges in the different systems handle the resulting problems.

The first panel, moderated by NYU Professor Larry Kramer, focused on "Judicial Review and Popular Sovereignty." Panel II, moderated by Professor Norman Dorsen, the chair of NYU's Global Law School Program, focused on "Preserving the Constitutional Architecture: Separation of Powers and Federalism." Panel III, moderated by NYU Professor Lawrence Sager, focused on "Clashes of Culture: Race, Nationality, Religion, Language."

Opinion generally held that this event was, in Norman Dorsen's words, "one of

the most effective and fruitful of its kind ever to be held on the complex topic of comparative constitutionalism."

NYU Professor Christopher Eisgruber summed up the entire event: "The seminar provided a fruitful exchange of views about different models of how national legislatures and courts can usefully cooperate in the service of democratic ideals. In Europe, particularly in France and Italy, but also in Spain, and particularly in the developing world, we are seeing increasingly aggressive interventions made by constitutional courts. They are becoming more expansive in their interpretation of their role. This represents a departure from the older models of parliamentary supremacy where the judiciary sometimes hesitated to act in an 'American' fashion."

Did Eisgruber mean to imply that other countries had something to learn from the American example? "Putting it that way sounds presumptuous," he replied. "Let us say there is great benefit to be had in better understanding one's own traditions by seeing them from the outside, not just the inside. We in the U.S., for example, can become more aware of the advantages and disadvantages of our system – in which, for example, the Supreme Court has a very wide jurisdiction, not an exclusively constitutional jurisdiction, as is the case with many European high courts."

The benefits of comparison and the "external" point of view are what the Global Law School Program is all about. ■

New York 2000

Panel 1: Judicial Review and Popular Sovereignty

Christopher Eisgruber, NYU Law

Victor Ferreres Comella

Pompeu Fabra Universitat, Barcelona

Dieter Grimm, Humboldt University & Institute for Advanced Study, Berlin

Valerio Onida, Corte Costituzionale, Italy

Michael Troper, Université de Paris X

Moderator: Larry Kramer, NYU Law

Panel 2: Preserving the Constitutional Architecture: Separation of Powers and Federalism

Bruce Ackerman, Yale Law School

Vicki Jackson, Georgetown University Law Center

Mattias Kumm, NYU Law

Pasquale Pasquino, CNRS, Paris & NYU Law

Moderator: Norman Dorsen, NYU Law

Panel 3: Clashes of Culture: Race, Nationality, Religion, Language

Luis Maria Diez-Picazo,

University of Malaga, Madrid

Noelle Lenoir, French Conseil de Constitutionnelle

Gertrude Lubbe-Wolff,

Universität Bielefeld, Germany

Mark Tushnet, Georgetown University Law Center

Moderator: Larry Sager, NYU Law

Rome 1999

Panel 1: Models of Constitutional Adjudication: France and Germany

Justice Noëlle Lenoir, Conseil Constitutionnel, Paris

Michel Troper, Université de Paris X

Walter Pauly, Universität Jena

Moderator: Lawrence Sager, NYU Law

Panel 2: Non-Elective Organs in the Constitutional State

Sabino Cassese, Università di Roma-La Sapienza

Larry Kramer, NYU Law

Moderator: Norman Dorsen, NYU Law

Panel 3: Models of Constitutional Adjudication: Spain and Italy

Pasquale Pasquino, CNRS, Paris & NYU Law

Victor Ferreres Comella

Pompeu Fabra Universitat, Barcelona

Ignatio Borrajo, Tribunal Constitucional, Madrid

Moderator: Larry Kramer, NYU Law

Concluding Remarks

Alberto Predieri, Università di Roma-La Sapienza

JILP Convenes World Symposium on International Child Abduction

Legal scholars, government officials, law students, and assorted others gathered at the Law School for the Sixth Annual Rubin Symposium on International Law, sponsored by the student-edited Journal of International Law and Politics.



Thomas Johnson shared his experiences as a parent of an abducted child.

This year's symposium examined the 1980 Hague Convention on the Civil Aspects of International Child Abduction. The Convention requires the prompt return of abducted or retained children to their states of habitual residence for judicial proceedings in order to prevent "forum shopping" by parents who might otherwise seek a more favorable tribunal in their native country. Over sixty states, mostly in Europe and Latin America, have ratified the convention.

Although the distinguished panel of speakers assembled in Lipton Hall would offer criticism of The Hague Convention and its ramifications, its positive impact was acknowledged. "To lose sight of what the convention has achieved," said NYU's Professor Linda Silberman, "is to lose sight of a very, very important part of what The Hague Convention does."

The symposium's morning and afternoon panels were both retrospective and prospective: while the morning's panel looked at the success and failure of current

implementation of The Hague Convention's provisions, the afternoon looked ahead to see how the Convention might be improved.

Participants ran the gamut, with panel members coming from the State Department, the Sixth Circuit Court of Appeals, and The Hague Conference itself, among other places. Silberman initiated the afternoon discussion by enumerating four principal areas of possible improvement, each of which was the basis of an examination by the other panelists. The four identified problems were: the lack of a uniform interpretation of The Hague Convention's precepts; the difficulty of enforcing Hague orders; the lack of access to legal representation in many Hague nations; and the general lack of trust among nations both inside and outside The Hague.

The symposium was well-timed, according to William Duncan, the head of The Hague Conference on Private International Law, which sponsored the original negotiations. "It's very helpful for the permanent bureau to have this kind of discussion at this stage," he noted, adding that the Conference was considering possible revisions aimed at strengthening the original treaty.

Legal consultant Patricia Hoff described how The Hague's provisions might be interpreted and applied without a supranational authority. A key problem, she noted, was the dissemination of Hague case outcomes among participatory nations. The Internet, she observed, could be an ideal means through which to disseminate cases relying on the Convention, but this could not occur without standardized reporting of cases and a proliferation of web sites related to the Convention.

The only representative of The Hague on the panel, Duncan agreed with this assessment of the current level of dissemination, but reminded the audience of the

inherent difficulty in compiling case outcomes for sixty jurisdictions. Jeffrey Kovar, one of several State Department officials participating in the symposium, summed up the need for cooperation between The Hague and its critics, observing: "We have to keep in mind that the Convention is a two-way street."

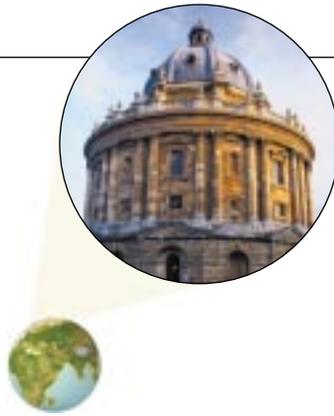
The problems associated with the ineffective enforcement of Hague rulings resurfaced throughout the day's discussion. Professor Dagmar Coester-Waltjen, a member of NYU's global law faculty, analyzed possible conflicts between Hague orders and the German Constitution, while University of Oklahoma Professor Robert Spector said of Hague proceeding participants, "They don't always live happily ever after."

Indeed, the problem of enforcement is inextricably tied to the lack of a uniform interpretation of Hague provisions. The Hague proceedings inevitably raise complex questions of jurisdiction, both in terms of the proceeding itself and its subsequent enforcement. Without a unified conception of jurisdictional precepts, Hague rulings may be ignored or even contravened by member nations with a different interpretation of what the law should be.

Sandwiched between the panels was a powerful discussion led by Thomas A. Johnson, who is himself the father of an abducted child. "The Hague Convention does not guarantee a satisfactory result for every left-behind parent," he said. Johnson, an official at the United States State Department, has spent over \$250,000 trying to regain custody of his daughter, who was abducted over five years ago by his wife, a Swedish diplomat.

Johnson's case illustrates the point that abductors can be mothers as well as fathers – a fact sometimes overlooked because of gender bias favoring women as parents. "There should not be any double standard regarding illegal removals under the convention," NYU's Silberman cautioned. According to Johnson, the financial and legal support provided by countries such as Sweden to abductors only has encouraged further violations of the convention.

Brian Hochleutner ('02) said the symposium had strong relevance to law students' lives, noting in reference to the symposium, "Every night I turn on the TV and see Elian Gonzalez playing with his puppy. What could be more timely?" ■



NYU Law and Oxford Professors Discuss Innovation Law

The first NYU School of Law-Oxford University Institute Conference convened at Vanderbilt Hall this last semester. Organized by NYU Professors Rochelle Dreyfuss, director of the Engelberg Center for Innovation, and Diane Zimmerman, in cooperation with Oxford academics Fiona Murray, Robert Pitkethly, Michael Spence, and David Vaver, the conference attracted, in addition to NYU and Oxford representatives, law professors and practitioners from the New York area.

Three principal issues were discussed. The first concerned the valuation of intellectual property rights, including how the timing, cost and nature of IP litigation might affect the value and use of patents in a business context.

The second issue, intellectual property and free speech, was discussed in many contexts, including parody, obscenity, use of celebrity images, control over collections of data, national security and biographical writings. The session examined European and North American approaches and ways of achieving greater international consensus in a world of borderless information flows.

The final session concerned common law intellectual property rights and was premised on the recognition that no statutory code covers every type of intangible to which someone may lay a claim. The discussion explored the respective roles of courts and legislatures, and the consequences of differing forms of legal control for business and the orderly development of the law. ■



The first NYU School of Law-Oxford University Institute conference brought together experts in the field of innovation law.

NYU School of Law – Oxford University Institute on Law in a Global Society

In recognition of the new world of increasing communications, common markets and shared culture, which invites the re-examination of familiar legal problems from transnational perspectives, NYU School of Law and Oxford University entered an agreement in late 1998 establishing an Institute to deepen the understanding of law as a global phenomenon.

The Institute consists of several initiatives designed to facilitate individual and collaborative research, teaching, student exchanges, and related intellectual activities on issues that transcend jurisdictional boundaries.

The Institute is directed by Professor Dan Prentice of Oxford University and governed by a small board that includes NYU School of Law Professors Norman Dorsen, chairman, Benedict Kingsbury, and Ronald Dworkin, who is also on the faculty of University College, London. Oxford University representatives on the board are Simon Gardner and Martin Matthews.

Several faculty members from NYU School of Law and Oxford University have visited the other institution.

Said Claire Pointing, the first Oxford student to visit NYU under the program: "Oxford and NYU School of Law represent two very different cultures of legal education. In my short time at NYU Law, I have learned that these cultures are in fact complementary. In auditing classes relating to my research area (electronic commerce), talking with faculty and students, and attending the Hauser Scholars' weekly lunches, I have been constantly challenged and stimulated. Without doubt, the NYU School of Law-Oxford University Institute offers a unique opportunity for Oxford and NYU Law students to experience and to benefit from these cultures of education."



New NYU-Princeton Program Addresses Role of International Organizations

Recognizing that the growth of international law in many spheres calls for strengthened arrangements and institutions for implementation, monitoring, and enforcement, the Law School houses the Center for the Study of International Organization (CSIO), in a joint venture with Princeton's Woodrow Wilson School of Public and International Affairs. The Center provides both a focal point for innovative policy research and a forum for deliberations among faculty, students, and the international policy community. Featuring interdisciplinary work on policy challenges that require the collaboration of social scientists and legal scholars, the CSIO views international organization as the crossroads between international law and international politics.

Founded by Edward Luck, longtime President and CEO of the United Nations Association of the USA; Thomas Franck, NYU's Murray and Ida Becker Professor of Law; and Michael Doyle, Edward S. Sanford Professor of Politics and International Affairs at Princeton University; the Center has now completed its first full year of operation. Over that year, its focus has been on compliance with and enforcement of international norms, the process of reform, adaptation, and change

within international institutions, the role of civil society in global governance and institutional change, and American attitudes and policies toward international organization. The result, an impressive catalogue of activities.

The Center launched a two-year study on "International Law and Organization: Closing the Compliance Gap," looking at the lessons learned from five key sectors. Among the paper writers have been Philippe Sands of NYU's Global Law Faculty; George Downs, Chairman of the NYU Politics Department; and scholars and officials from Uganda, South Korea, Pakistan, Canada, Australia, Yale, and Princeton. Two roundtables and a two-day workshop have already been held, and a larger international conference and several follow-up meetings are planned for the coming academic year. Michael Doyle and Ed Luck are editing a book of analytical papers and policy conclusions.

- At the behest of the United Nations, the Center is seeking ways of discouraging the practice of recruiting child soldiers and of targeting women and children. A workshop at the Law School brought together Olara Otunnu, the Secretary-General's Special Representative for Children and Armed Conflict, diplomats, officials, non-govern-

mental advocates, and scholars, including Benedict Kingsbury of the Law School, to consider new measures for protecting children in conflict situations. Ed Luck has been asked to take the lead in drafting the Secretary-General's first report to the Security Council on this problem.

- The Center also worked with several member states of the United Nations on ways to enhance the effectiveness of arms embargoes adopted by the Security Council, and on how the international community can exercise greater leverage over the parties to conflicts based on lessons from past peace-keeping efforts. To that end, CSIO hosted a roundtable on lessons from the relatively successful U.N. operations in Mozambique and Eastern Slavonia.
- To gauge the extent to which non-governmental groups have been able to spur reform within the U.N., the Center organized a one-day conference of top diplomats, U.N. officials, and the leaders of a dozen independent panels that urged changes in the world body over the past decade. The resulting assessment, "Blue Ribbon Power: Independent Commissions and U.N. Reform," was published in the inaugural issue of *International Studies Perspectives*.
- When the Senate Foreign Relations Committee held its first formal hearing outside of Washington, D.C., at the Bar Association of the City of New York in January 2000, Luck was asked to testify on "The Future of United Nations Reform."

The Center hosted an important speech by Sadako Ogata, the U.N. High Commissioner for Refugees, concerning how her agency can assist with the growing number of internally displaced people, on top of its primary responsibilities for refugees who have crossed an international border.

In addition, the first book completed at the Center, Luck's *Mixed Messages: American Politics and International Organization, 1919-1999*, was published by the Brookings Institution Press. The widely-acclaimed volume is the first to trace the sources of American ambivalence toward international organization.

As the Center expands its horizons in the years ahead and draws a wider circle of students and scholars to its programs, it will be guided by the advice of an International Leadership Council, to be headed by Lord Carrington, former Secretary-General of NATO and former defense and foreign minister of the United Kingdom. ■

Annual Seminar for ICRC Discusses Humanitarian Law

Each spring, the Law School hosts a major conference on international humanitarian law for diplomats accredited to the United Nations. Organized by NYU's Professor Theodor Meron, and sponsored jointly with the International Committee of the Red Cross, the seventeenth annual Seminar for Diplomats on International Humanitarian Law took up the theme Conventional Arms and Victims of Armed Conflict.

A highlight of the Conference is the Annual Hauser Lecture on International

Humanitarian Law, delivered this year by Lloyd Axworthy, Canada's Minister of Foreign Affairs. In the lecture, Axworthy discussed recent developments in humanitarian intervention and enforcement. (See below for full story.)

As illustrated by this list of conference speakers and panels, the world's leading experts in humanitarian law gathered to explore possible solutions to some of today's most pressing problems in this area around the globe. ■

Canadian Minister of Foreign Affairs Delivers Hauser Lecture



Lloyd Axworthy, Canadian Minister of Foreign Affairs

"There are times when events compel us to reassess thinking and review practice," explained Lloyd Axworthy, Canada's Minister of Foreign Affairs, to a group of diplomats, professors, and students during his visit to the Law School as he delivered the sixth annual Hauser Lecture on International Humanitarian Law. "We live in one of those times."

Axworthy began by noting changes in modern warfare that increasingly threaten the safety of non-combatants. "The reality of modern conflict puts individuals most clearly at risk," said Axworthy, pointing to the fact that eighty percent of casualties in recent conflicts have been civilians. "The victimization of civilians is no longer the by-product of war, but often its principal aim and, more often than not, its main result."

"International promotion of human security does not weaken sovereignty, but tends to strengthen it," Axworthy contended. "Sovereignty

is less and less a shield behind which abuses can occur." Then he asked: "How curious it is that the most ardent defenders of state authority are the very ones with few qualms about ceding it to global economic institutions when their economic interests are at stake. But what's more important – protecting citizens or improving your gross domestic product?"

Axworthy's perspective on the political constraints behind humanitarian intervention comes from experience. Canada has a long history of participation in United Nations peacekeeping operations and has sought in recent years to carve out a leadership role in holding states accountable for war crimes and other atrocities. "Certainly, preventive and largely non-coercive action is best: mediation, confidence-building, promoting good governance, democratic institution building, preventive deployment, peacekeeping or sanctions," Axworthy suggested. "They don't always work."

"In my view, the challenge is to establish a climate whereby in the most extreme cases of human suffering and in the absence of other options, enforcement action can be used as a tool to protect civilians," Axworthy observed.

The annual lecture is named for Rita ('59) and Gus (LL.M.'57) Hauser, who provided the funding to create it. "We endowed the lecture to elucidate to the school and diplomatic community the unfolding of humanitarian law and its application," said Mrs. Hauser. "This is an area of law which has seen important developments in recent years," she added.

Seventeenth Annual Seminar for Diplomats on International Humanitarian Law: Conventional Arms and Victims of Armed Conflict

Greetings

Hans Corell, Under-Secretary-General, The Legal Counsel to the United Nations

Keynote Address: ICRC Involvement In Banning or Restricting the Use of Certain Weapons

Yves Sandoz, Former Director of International Law and Communication, International Committee of the Red Cross (ICRC)

The Fundamental Rules of International Humanitarian Law

Patrick Zahnd, Deputy Head, ICRC Delegation to the United Nations, New York

The Law on the Conduct of Hostilities

Peter Herby, Coordinator, Mines-Arms Unit, Legal Division, ICRC, Geneva

Humanitarian Law Issues Before the U.N.

Roy Lee, Former Director, Codification Division, Office of Legal Affairs of the United Nations

Human Rights Influences: Rereading the Geneva Conventions

Theodor Meron, Charles L. Denison Professor of Law, New York University School of Law

The ICRC and the United Nations

Sylvie Junod, Head, ICRC Delegation to the United Nations, New York

Panel: SIRUS Project, Laser Weapons, Landmines and New Weapons Developments

Ivor Fung, Director, U.N. Regional Center for Peace and Disarmament in Africa, Lome, Togo

Peter Herby, Governing Weapons Coordinator, Mines-Arms Unit, Legal and the SIRUS Project Division, ICRC, Geneva

Marie Jacobson, Deputy Director Humanitarian Affairs Division, Stockholm Foreign Office, International Law and Human Rights Department, Ministry for Foreign Affairs, Sweden

Moderator: Theodor Meron

Deputy Secretary of State Strobe Talbott Visits NYU

"Globalization is the most important phenomenon going on in the world today," U.S. Deputy Secretary of State Strobe Talbott told a group of students, professors, and alumni during a recent visit to the Law School. "We are involved in the process of globalization. We not only are affected by it – we also are a force creating globalization. The essence of our challenge is to make the forces of globalization work to our benefit," he said.

Talbott knows his subject. He earned his stripes as a journalist and editor at *Time* magazine and as the author of several books before his appointment in 1994 to the second most important post at the State Department.

Talbott began his conversation with the assembly by offering some general observations on the changing character of diplomacy. He questioned whether the usually postulated tension between interests and values in international relations actually exists. According to Talbott, this tension has polarized foreign policy observers who cleave to the idea that "you can have realism or idealism," but not both. Talbott argued that their views present a false dichotomy: "Our national interests are very much rooted in our national values."

Talbott then focused on the meaning of "democracy," which he suggested should not be limited to the procedural formality of free and fair elections. "There's more to democracy than voting for leaders," he said. He con-



Deputy Secretary of State, Strobe Talbott

tended that ensuring the rule of law in transitional societies comprises an essential foreign policy objective that must be achieved for a society to be truly democratic. "Russia is a test of the proposition that, if democracy is to take off, it must be rooted in the rule of law," observed Talbott, one of President Clinton's top advisers on Eastern Europe.

Talbott's discussion then turned to the changing nature of international and national structures designed to address globalization and regionalization. He observed that rigid Westphalian notions of state now have yielded to a more porous and dynamic understanding of sovereignty. In some cases, decision-making power is pooled upward –

as in intergovernmental institutions such as the European Union – while in others it devolves downward to regional bodies.

Finally, Talbott looked at the recent debates on the use of force in international relations and the NATO bombings in Kosovo. "When there is agreement in the international community on certain norms, and those norms are violated, what do we do about it?" he asked. He urged balancing the use of force with existing mechanisms for peacekeeping.

As to the future of "globalization," Talbott argued that the process of globalization will be undeterred by recent political rhetoric aimed at limiting American involvement in foreign conflicts. "Isolationism is not a danger," said Talbott. "Americans by their heritage are incurably internationalist."

Students found Talbott's discussion highly engaging. "I appreciated the insight Secretary Talbott offered into the Clinton administration's view of international and regional organizations as important policy tools to achieve democratic peace," said Anna Pomykala ('01). "Also, his discussion of American action outside the U.N. system because of the system's imperfections provided me with food for thought in considering the future of U.S.-U.N. relations," added Pomykala.

Talbott's visit concluded with a dinner in Lipton Hall in his honor. At the end of the evening, Law School Professor Thomas Franck presented Talbott with the first copy of Franck's book, *The Empowered Self: Law and Society in the Age of Individualism*, recently published by Oxford University Press. ■

...as Does Justice Goldstone of the South African Constitutional Court

NYU Law students frequently have the opportunity to meet remarkable members of the international legal community. Such a visit occurred last fall as Richard Goldstone, Justice of the South African Constitutional Court and former chief prosecutor for the International Criminal Tribunals for the former Yugoslavia and Rwanda, spent four days at the Law School.

Goldstone lectured in Professor Alexander Boraine's seminar on transitional societies as

well as the International Jurisprudence Colloquium convened by Professors Benedict Kingsbury and Anne-Marie Slaughter. The Law School also organized an informal question-and-answer session for students to meet with the South African jurist.

"Justice Goldstone's visit provides an opportunity for NYU Law school faculty and students to exchange ideas with one of the world's leading jurists," observed Iqbal Ishar, Executive Director of the Global Law School

Program. "It also shows that the Law School has become a venue for serious discussions on global issues."

"NYU is a very special place," said Goldstone. "I am envious of the faculty, and even more of the students. One needn't be in the hallways for more than five minutes to sense the warmth and creativity here."

On the first day of his visit, Justice Goldstone talked to members of Boraine's class about recent conflicts in the former Yugoslavia. "What happened in Kosovo and the intervention there is really a watershed event for recent history," said Goldstone.

Goldstone heads an international commission established by the government of

Sweden to analyze the Kosovo conflict and provide an objective evaluation of events before, during, and after the NATO military intervention (see stories, pages 56 and 57).

According to Goldstone, the need for an independent commission arose from the “concern that no major Western country and no major international organization could analyze objectively the situation in Kosovo, particularly the military intervention.” Goldstone explained. “The idea to objectively analyze the events in Kosovo came not for the purpose of apportioning blame, but rather for seeing what lessons there are to be learned for the next century.”

At the International Law Colloquium the next day, Goldstone discussed the recently established International Criminal Court (ICC). The ICC represents a signal achievement in international law, according to Goldstone. He noted that states already have an obligation under conventional law to prosecute many international crimes, such as genocide or torture. “Universal jurisdiction has been recognized in many countries, including

the United States. This trend has been growing over the past two or three decades,” Goldstone explained. “What’s missing is an international court to try these criminals.”

Goldstone argued that there was an urgent need for a permanent tribunal given the ceaseless violence of modern societies. “There’s no reason to believe the twenty-first century will be any better than the twentieth unless a mechanism is put in place to retard that criminality.”

Goldstone criticized U.S. opposition to the ICC. “If one’s going to set up international bodies, one must have faith in the sensibility of the selection process,” he said. “In an international prosecutor’s office there can be no secret agendas.”

Students had another opportunity to meet informally with Goldstone at a question-and-answer session on the final day of his visit. “The chance to put questions to someone of his experience is so valuable because he can translate the lessons from one context into other contexts,” observed Wendy Wylegala (’00), who participated in the Law School’s



(L-r) Justice Richard Goldstone with NYU Law Professor Norman Dorsen and Dr. Alex Boraine

exchange program with the University of Cape Town in the spring semester.

NYU’s relationship with the South African jurist began in January 1997 when Professor Theodor Meron invited Goldstone to deliver the annual Hauser Lecture on International Humanitarian Law. Justice Goldstone returned to NYU in April 1998 as a Distinguished Global Fellow as part of the Global Law School Program. ■

...and Justice Vojtech Cepl of the Czech Republic



Justice Vojtech Cepl

Justice Vojtech Cepl of the Constitutional Court of the Czech Republic visited the Law School to meet with students and faculty. During a luncheon presentation, Justice Cepl treated the Law School community to a stimulating discussion of current legal issues in the Czech Republic.

Justice Cepl began by discussing the law on lustrations – *Lustracni zakon* – in effect in the Czech Republic since shortly after the Revolution in 1989. Under this highly controversial law, all high-level government employees who had collaborated with the STB (the Czech version of the KGB) have been required to leave their positions. When Justice Cepl was asked whether a lustrations law would have been effective in Russia, where such laws have never been enacted, Cepl responded in the negative: A fair and effective lustrations law would require meticulous records of government officials’ activities. Yet unlike the Czech STB, which kept meticulous records about every person involved and their activities, the KGB claimed that it did not maintain accurate files of their collaborators.

Cepl then discussed the crisis in the Czech Republic’s system of legal education, where all law schools are publicly owned and operated. Cepl believes that the development of private law schools would dramat-

ically improve the quality of legal education in the Czech Republic, because it would introduce a level of competition among institutions which has never existed before.

Finally, Justice Cepl discussed bankruptcy laws in the Czech Republic. In doing so, he discussed some aspects of Czech society – a society and a people that he described as highly nationalistic and closed. As a result, when new laws were being drafted and implemented after the Revolution, there was a general resistance to looking toward or embracing models from other States. Thus, for example, when new bankruptcy laws were written in 1989, the Czech Republic bankruptcy laws of the 1930s were used as a model. That period – known as the Czech “First Republic” – was a particularly auspicious model for the laws of the new Czech Republic because it was a period of widespread prosperity and Czech identity. Justice Cepl remarked that the Czech Republic’s tendency to base its laws on obsolete models rather than to modernize was the product of nostalgia, and that Czech society must instead look toward examples of modernization in other emerging nations so as to be able to respond to the conditions of the 21st century. ■

Dr. H. Onno Ruding Delivers Fourth Annual Tillinghast Lecture



Dr. H. Onno Ruding

The creation of the European Monetary Union (EMU) was critical to the creation of a European common market. The use of the Euro has facilitated the common market's emergence. However, as Dr. H. Onno Ruding, Vice Chairman of Citibank, pointed out at the Fourth Annual David R. Tillinghast Lecture on International Taxation, "much of this political attention will shift to tax harmonization and coordination."

Harmonization is the process of reducing the disparities between tax rates. This is necessary, said Ruding, to prevent the flight of capital from one country to another within the EMU. The advent of the Euro has made this sort of "tax poaching" much easier.

Coordination is the process of having the various tax authorities in the EMU work together to reduce double taxation. Ruding said this is most problematic in the area of cross-border transactions, where both countries involved in a transaction may want to tax it. This is inconsistent with a common market, according to Ruding.

Ruding, the former Minister of Finance for The Netherlands, narrowed his remarks to a discussion of equalizing the status of direct corporate taxation. He said that indirect corporate taxes, including the Value Added Tax (VAT), had already largely been harmonized.

Not all European leaders are in favor of tax harmonization and coordination, according to Ruding. "Many politicians are against harmonization but in favor of a certain

degree of coordination," he said. The result of this is tax competition, where countries compete against one another in tax policy.

Other policy makers have argued, according to Ruding, that the EMU has already reduced the room for national maneuvering and that fiscal policy will be one of the few tools left for individual governments.

Business leaders, in particular, are worried about whether a harmonized level of taxation will result in higher or lower taxation, said Ruding, who opposes raising tax rates in low tax countries to the level of high tax countries, such as Germany, France, and Italy. Ruding pointed to the example of the VAT harmonization – "it works" – which established both a minimum and a maximum rate.

"If harmonization of corporate tax in Europe leads to setting minimum rates, one must know whether it is at a lower level or at a higher level," said Ruding, who added he would oppose a high tax. "The goal of

European tax harmonization should not be to increase the overall tax burden."

"The drive towards harmonization must have a limited scope," cautioned Ruding, because the Maastricht Treaty imposed strict budgetary constraints on countries in the EMU. As a result, most countries cannot afford a loss in national tax revenues. Ruding noted that he was not advocating an overall reduction in tax rates in EMU countries.

Following Ruding's speech, Assistant Acting Professor of Law Miranda Stewart provided commentary. She said that tax harmonization had moved away from a use of the treaty process to reduce double taxation and prevent evasion and that "more recently, the problem has been how to tax the mobile capital base."

Stewart said that some commentators are taking the view "that there is an international commons in the tax base like fish stocks in the ocean." Political leaders could then "come to some agreement in allocating this global tax base."

The Tillinghast Lectures are sponsored by the LL.M. in International Taxation Program and the firm of Baker & McKenzie. ■



Justice Menachem Elon Delivers Gruss Lecture

The annual Gruss Lecture in Talmudic Civil Law, presented by Menachem Elon, retired Deputy President of the Supreme Court of Israel, traced the legal case back to the Bible and underlined its role in shaping Jewish law – secular and religious. Elon, currently the Gruss Professor of Talmudic Civil Law at NYU, titled his lecture “Justice and Human Rights: Cases, Principles, and Books.” The theme highlighted how “in Jewish law, the principles of justice and human rights are not expressed as abstract principles in declaratory form, but are derived from cases.”

Jewish law has evolved and been applied through binding legal decisions called “*responsa*.” While differing superficially from other legal systems’ judicial rulings, like them the *responsa* feature “a description of the facts, the parties’ arguments, the evidence, and the legal analysis; both include a legal conclusion and a decision; and both are authoritative and definite – the one by virtue of the judge’s formal legal authority, and the other by virtue of the respondent’s spiritual eminence as a *halakhic* authority.”

Further, the *responsa* reflects a decision based on a real-life, practical application of a law, rather than academic study. The *responsa* through the course of Jewish history had to be applied “in a manner consonant with the contemporaneous circumstances.” Today one can find some 350,000 *responsa* in over 3000 different books.

Adam’s hearing before God after being expelled from Eden was the first recorded case, said Elon, establishing the right to be heard such that, “even God – who knows everything – does not make a decision without offering the person the opportunity to be heard.” In a later episode from Genesis, Abraham pleads on behalf of the righteous citizens of Sodom, whom God will destroy along with the city. Here, significantly, said Elon, it holds accountable “even the Supreme Legislator, who is the source of all law.”

In exile and without political independence over the centuries, Jews maintained their own judicial tribunals, relying on the same sources for matters both religious and civil. “Jewish law was regarded as its national legal system, the spiritual and cultural

heritage of the Jewish people, which continued to exist as a national entity and not merely as a religious sect,” Elon said. This separate judicial authority “provided the basis for and guaranteed the preservation of the individuality and indivisibility of the people.” Only after Emancipation in the late 18th century did Jews turn, increasingly, to outside courts.

Elon said that Jewish legal authorities favored principles based on the *responsa* over those derived from the books of the legal codifiers. “It is a telling statistic,” Elon said, “that in the overwhelmingly greater part of the 1300 years during which the *responsa*

literature has existed, the part of the law included in *mishpat ivri* – i.e., all aspects of civil law and a large proportion of administrative, public and criminal law – accounts for 70 to 80 percent of all the *responsa*, whereas only 20 to 30 percent deal with the purely religious laws.”

Quoting the sages, Elon said that a judgment must reach, literally, “a true judgment to its very truth.” That means, Elon said, that judicial ruling is only correct if it “is derived both from the law of the Torah and an understanding of the nature of the world.” This discourages a literal application of legal precepts to the exclusion of their effects in contemporary society. To this end, Elon concluded with his concern that judges in Israel today may be tempted to seek perfection (*shelemut*) through judicial activism rather than peace (*shalom*). ■

NYU School of Law Initiates New Colloquium on International Jurisprudence

This past academic year, NYU Law Professor Benedict Kingsbury, Global Professor Philippe Sands, and Visiting Professor Anne-Marie Slaughter convened a new Colloquium on International Jurisprudence: Pinochet, International Criminal Law, and Human Rights. Open to all NYU students, the colloquium dealt with problems of theory and practice arising from the increasing use of foreign and international tribunals to address human rights violations.

The impetus for the course was the Pinochet case, which was unfolding simultaneously. Special attention was focused on important issues of international law and policy raised by the case and other criminal and civil cases in national courts. The colloquium also addressed the possibilities and problems of an international criminal tribunal, issues of state responsibility, and recent research on the effectiveness of international human rights tribunals.

At each session, a guest speaker addressed the group on the speaker’s current research based on papers that were distributed earlier. The speakers brought personal experience and diverse viewpoints to the colloquium.

Professor Sands spoke of the dilemmas of legal practice and his involvement on behalf of Human Rights Watch in the Pinochet case. Professor Michael Byers of Duke University, who was also involved in the Pinochet case on behalf of Amnesty International, reflected on his experiences in light of dilemmas such as Kosovo and East Timor. Justice Richard Goldstone of the South African Constitutional Court discussed the establishment of the International Criminal Court from the viewpoint of having been the first prosecutor for the International Criminal Tribunal for the Former Yugoslavia. Other speakers included Professors José Alvarez, Columbia University Law School; Andrew Moravcsik, Harvard University; Karen Knop, University of Toronto; and Anne-Marie Slaughter. NYU Law Professor Theodor Meron, advisor to the U.S. delegation to the International Criminal Court Conference in Rome, also participated in the colloquium.

The colloquium provided students with an opportunity to examine cutting-edge legal issues in a forum not usually available in more traditional courses. ■

Gelatt Dialogue Reviews Fifty Years of Law in China

The Fifth Annual Gelatt Dialogue on Law and Development in Asia featured a discussion of law and development in China fifty years after the Communist Revolution. Moderated by NYU's Professor Jerome Cohen, the panel also included Professor Liang Zhiping of the Chinese Academy of the Arts and Director of the legal culture research center in Beijing; Professor Lawrence S. Liu, partner, Lee and Ti (Taipei); Professor Allison Conner, University of Hawaii School of Law; Professor Randle Edwards, Columbia University School of Law; Adjunct Professor Hugh Scogin, NYU School of Law, and Michael Dowdle.

In the wake of celebrations of the fiftieth anniversary of the People's Republic of China, the discussion on China provided an opportunity, in Cohen's words, to look back at "what has been accomplished, what has not been accomplished, and whether contemporary China can resist the pressure of globalization."

Professor Zhiping began by reflecting on the development of jurisprudence, observing that it has progressed through two distinct stages. The first stage (the first thirty

years following the revolution) represented an interruption of the modernization of law in China. During this time, the communists outlawed all old laws, and abandoned law schools and the judiciary. The second stage, which continues to the present day, introduced a rule of law.

Professor Liu described the "painful inventory" of Taiwan's history since the United States broke diplomatic relations in 1979. The last twenty years were better domestically, creating "a political regime that is accountable to its people, a legislative body and courts," noted Liu. But internationally, improvement is vitally necessary.

One of two historians on the panel, Professor Connor focused her comments on the first half of the twentieth century. Despite the shortcomings of China's legal system at the time, the period was a success. Courts had done well. Given the conditions and available resources at the time, it was a remarkable achievement, observed Connor.

Professor Edwards characterized the law in China since that early time as a "movement away from total control to more freedom." He recognized, however, that "it is

hard to get away from the habit of state control," and he questioned whether this tendency was structural or cultural.

Michael Dowdle discussed the historical development of social democracy, noting that "countries that focus on social democracy do not have very strong capital markets." China, then, may be "better served by neo-corporatism, a form of corporate governance that does not resemble a rule of law governance as exemplified by the International Monetary Fund and the World Bank," he said.

The final panelist, Hugh Scogin spoke of the legal culture in China and the Chinese proverb: "Heaven's high and the emperor's far away." As Scogin sees it, beneath the law promulgated by a central authority, a tradition of local law in China always has existed. The local communities "lead their lives, feed their families, and make use of what was provided as legal tools to develop their own solutions such as local magistrates, local customary norms, and local social law." As a result, "the tremendous progress in the last decade in China has been achieved by the people," said Scogin.

Launched in 1995 in memory of NYU Adjunct Professor Timothy Gelatt, an expert on Chinese law, the Gelatt Dialogue each year brings together a diverse group of specialists in Asian law and society. ■

Forum Addresses Affirmative Action in the New South Africa

Longtime apartheid opponent Nelson Mandela left his jail cell a free man on February 11, 1990, signaling an important milestone in recent South African history and the beginning of the end of that nation's racist legal system. A decade later, much progress has been made in promoting multiracial democracy in South Africa. One of the controversial engines of this political transformation is a nationwide program of affirmative action. In this context, a group of scholars gathered to discuss the merits of the policy at a symposium sponsored by the Global Law School Program and the Black Allied Law Students Association.

"Affirmative action is at the center of the debate concerning equality in America. It



F. Michael Higginbotham

brings up comparisons of similarities and differences with South Africa," said F. Michael Higginbotham, an adjunct professor at the

Law School who teaches a course on race and the law in South Africa and the United States. "We don't like to look in the mirror because it causes us to see our deficiencies."

Higginbotham suggested several rationales for the South African preference system that echo justifications raised in the American context. Affirmative action helps provide role models for the black community by promoting blacks to leadership positions in the public and private sectors; and, he added, diversity is an important ideal in a multiracial democracy.

Other panelists raised the questions of identity that shape post-apartheid politics in South Africa. Identifying who should benefit from affirmative action has been a vexing question in Johannesburg. Should the remedy be available only to native South Africans, or also to other groups – among them women, immigrants, and even Afrikaners? "Some have said affirmative

action created a market in identity," said Penelope Andrews, a South African and CUNY law professor. "The identity problems are serious problems." And this identity debate continues while unemployment in the black community looms around 40 percent.

Despite Desmond Tutu's vision of a "rainbow nation," South Africa remains divided into two worlds, explained Edward Ramsamy, a professor of Africana studies at Rutgers who grew up in South Africa. The current rainbow is limited to two colors: black and white. "There is a rhetoric of reconciliation, yet great disparities still exist," said Ramsamy.

Graeme Tucker (LL.M.'00), a Hauser Scholar from South Africa and founding member of the South African Liberal Students Association, a group opposed to affirmative action, expressed concern that the affirmative action program offended basic rights by setting up a system of preferences based on race.

According to Tucker, affirmative action only widens the divide between the rich and poor in South Africa, which presently lacks a thriving middle class. Among the negative effects of the government program, Tucker pointed to the emigration of white South Africans – who now see greater opportunities for employment outside the country – and to a potential tug-of-war between companies for a limited supply of top black workers. "The problem is not a shortage of jobs for Africans," said Tucker. "The problem is a shortage of Africans for jobs." He recommended other, non-discriminatory solutions to South Africa's problems, including enhanced educational and job training programs and a system of tax incentives to promote development in the black community.

Higginbotham praised such approaches. "But they should not be considered alternatives. They should be implemented along with affirmative action," Higginbotham countered. "In my view the real issue in South Africa is this: South African problems deserve South African solutions," said Higginbotham, who questioned the extent to which American policies could be copied in exact detail in post-apartheid South Africa. The fact that no one in South Africa is satisfied with the limited effectiveness of efforts to counter institutionalized racism in the United States constitutes the ultimate indictment of the American system, Higginbotham reasoned. ■

Symposium Discusses the U.S. Blockade of Cuba



Raul Dausá Céspedes, Ambassador Extraordinary and Plenipotentiary Deputy, Permanent Representative of Cuba to the U.N., offered harsh criticism of the embargo.

Raul Dausá Céspedes, a Cuban diplomat at the United Nations, had harsh words for recent American legislation against his Communist country when he spoke at a panel discussion held in Greenberg Lounge this spring. "It's an economic war against Cuba," he said. As is often the case in discussions at NYU Law, however, other panelists disagreed and supported the boycott.

The panel discussion, sponsored by the Law School's Cuba Legal Studies Group with additional support from the Global Law School Program and the *Journal of International Law and Politics*, focused on the 1996 Helms-Burton Act, a controversial law that strengthened the economic embargo against Cuba and imposed secondary boycotts on trading partners.

Other panelists included Brice Clagett, an attorney and Helms-Burton supporter, and Michael Krinsky, a lawyer representing the Cuban government in the United States. Carlos Rosenkrantz, a professor at the University of Buenos Aires and member of NYU's Global Law Faculty, moderated the discussion, which began with remarks from Jane Franklin, author of *Cuba and the United States: A Chronological History*.

Congress passed the Helms-Burton Act in the wake of an international incident in 1996, when an airplane flown by anti-Castro activists was shot down by the Cuban military. Titles I and II of the act strengthened sanctions against Cuba and conditioned future aid to the country on a prescribed set of

democratic reforms. Title III opened federal courts to suits brought against third parties "trafficking" in Cuban property confiscated by Castro from American nationals, or Cubans who become naturalized citizens. Title IV bars corporate officers or shareholders of "trafficking" companies from entering the United States.

"The Helms-Burton Act is a kind of Frankenstein," said Dausá, who described the Act as the work of anti-Castro Congressmen who combined in a single Act several old pieces of legislation that had been rejected during previous legislative sessions. Other countries have voiced their opposition to the Act, Dausá added. "The real isolated country is the United States. The world is against this policy."

"The essence of Helms-Burton is Titles I and II," said Krinsky. "In those sections are the American objectives in Cuba." Krinsky criticized the act as a "comprehensive and devastating measure against a small neighboring country." He argued that the act intruded on Cuban sovereignty in violation of the charters of the Organization of American States and the United Nations. The legality of government expropriation of private property is "a question where sovereign states have disagreed and continue to disagree," said Krinsky, who added that American courts have upheld the legality of uncompensated takings by foreign states.

Dausá noted that Cuban nationalization laws provided compensation, but that plans to pay former property owners were thwarted by the American sanctions. Yet the compensation offered by the Cuban government "wasn't prompt, adequate, and effective relief as required by international law," Clagett countered. Any compensation was contingent on payments over a long period of time.

The Cuba Legal Studies Group is a non-partisan student group that has sponsored research trips to Havana for the past three years. "We're studying the Cuban legal system," said Lenore Anderson ('01), one of the organization's coordinators. "Last year we attended a criminal trial and took classes at the law school of the University of Havana." Students also visited with a group of Cuban lawyers. ■