

AVENA IN AN OKLAHOMA COURT

Notes from the President

An Oklahoma court did a brave thing a few months ago: it held, under considerable time pressure, that international law applicable in the United States required a stay of execution of a criminal defendant and an evidentiary hearing on the remedy to be provided for a violation of international law by Oklahoma authorities.ⁱ The effect of decisions of international tribunals on U.S. domestic proceedings sometimes is a political issue in this country, and the Oklahoma Court of Criminal Appeals (and Judge Charles S. Chapel, in particular) deserve recognition for treating it instead as a serious legal matter and addressing the issues with full consideration of the

important principles involved.

Many members of the Society will be familiar with the Avena caseⁱⁱ and its antecedents, all dealing with the Vienna Convention on Consular Relations and its Optional Protocol requiring that disputes concerning the Convention be submitted to binding resolution by the International Court of Justice. Those who attended our 2004 Annual Dinner will recall a presentation about the ICJ's Judgment of March 31, 2004, then hot off the presses, in the case brought by Mexico against the United States. The Court found that 51 Mexican citizens convicted of capital crimes in 10 U.S. states and sentenced to death had been denied the rights to assistance and



communications protected by the Convention. Donald Donovan, one of the attorneys for Mexico, and Assistant Legal Adviser for Consular Affairs Catherine W. Brown, who was among those representing the United States, spoke about the case

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EISIL, THE SOCIETY'S WEB-ACCESSIBLE DATABASE, ARRIVES

New Site Receives Coveted IALL Award

On September 1, 2004, the Society launched EISIL, the new Electronic Information System for International Law. With more than 1,500 primary source materials, resource guides, and Web sites organized into 13 categories, www.eisil.org is the most comprehensive electronic resource of authoritative information on international law.

EISIL enables lawyers, scholars, librarians, and novice users to find information on hundreds of international law subjects with unprecedented speed and ease. EISIL aggregates the highest quality primary materials, authoritative Web sites, and helpful research guides, which previously were scattered across law libraries, archives, and specialized Web sites. Not only has each source been selected by an information expert (see the list of EISIL authors [below]), but for each source EISIL also offers helpful background for researchers, such as com-

plete citations and references, dates when laws or treaties were concluded, summary descriptions, and links to related resources.

ASIL President **Jim Carter** noted that EISIL helps users locate the information they need with greater ease and precision than using general search engines or other generic resources. "As a member of the Court of Arbitration for Sport, I understand that issues of international law can arise in unusual places, such as South Korea's appeal of the Olympic gold medal in men's gymnastics," Carter said. "If a user searches EISIL for 'international sports court' they're brought quickly to the site for the Court of Arbitration. A similar search on Google brings users to a cement contractor specializing in backyard basketball courts."

EISIL's Project Managers are **Jill Watson**, former ASIL Director of Library and Information Services, and **Marci Hoffman**, International & Foreign Law Librarian, University of California, Berkeley

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THE ELECTRONIC ASIL

Message from the Executive Director

On September 20, 2004, the Society launched the fourth version of its Web site, www.asil.org. Supported in part by a grant from the Ford Foundation, the new site replaces one that had been in operation since 2001, a year that, sadly, saw visitors to the site break the one-million-hits-per-month mark because of the 9/11 tragedy. Like most organizations, the ASIL did not have a Web site until eight years ago. During this relatively short but truly revolutionary period, www.asil.org has moved from being a nascent tool to becoming the centerpiece of ASIL operations, and we are only beginning to realize the potential of this medium.



As we undertook this most recent Web makeover, we had three principal audiences in mind:

- the ASIL member;
- the broad policy community; and
- the general public.

For the ASIL member, the new interactive Member Service Center will allow you to conduct individual transactions, change contact information, access the ASIL Membership Directory, and avail yourself of other membership benefits. For segments of the policy community, the Web site will provide resources specifically tailored for use by those who are not expert in international law, but whose work may influence its future development. And for the general public, the Web site provides background on current topics and useful resources to lead the visitor to the best international law information available on a subject. We have enriched the content on our site and improved its capacities as a delivery and dissemination vehicle.

We are next developing the means to enable wider participation in discussions and member-organized activities. For example, we recently took a step in this direction by announcing regional meetings to all U.S. members. Increased use of online registration for meetings will make it more convenient for members to sign up for ASIL activities, and the Web site's "In the News" section collects the opinions and writings of members. These features and more are designed to keep members more closely in touch with each other and to facilitate participation in international law activities.

An additional feature of our new site is the Electronic Information System for International Law (EISIL). EISIL's mission is to simplify research on a full range of international law subjects by serving as the leading electronic resource for primary documents, authoritative Web sites, and helpful research guides. Developed with the support of the **Andrew W. Mellon Foundation**, EISIL includes over 1,500 selected sources organized into thirteen subject groupings in a fully searchable database.

EISIL's authoritativeness is as valuable as its navigating and organizing structures. **Jill Watson**, former ASIL Director of Library and Information Services who is an EISIL Project Manager, reminded many of us over the years that libraries have value because of the people who organize and help you find the information you need. This is even more important in the electronic realm, where people either receive too much information or assume that what they happen upon is credible or enough. You can read more about both Web sites on pages 6 and 7 of this newsletter, and I encourage you to visit them at www.asil.org and, from there, www.eisil.org.

As we note and celebrate the launch of these new Internet resources, I am reminded of the importance of the human network whose dedication, time, skill, and expertise made these resources possible. Members as authors are well represented on both the ASIL and EISIL sites, and continue in the best tradition of ASIL as a learned society where members contribute both to the intellectual capital and development of our subject area. But what technology now makes possible is the drawing together of a widespread membership enabling our more than 4,000 members to locate, correspond, and work together with fewer time or distance barriers. What makes our Web site and information resources different from others is that they are the outcome of collegial collaboration developed by international lawyers both for international lawyers and a broader public. We hope that the functionality and power of these Web sites will serve as an additional mode through which individual ASIL members can come together to form both a network and community for international law. Keep visiting and take part when you can.

Remembering Sir Robert Jennings

On August 4, 2004, international law lost one of its most familiar faces when Sir

Robert Jennings died. Knighted in 1982, Sir Robert's career spanned more than 50 years in the world's leading courts and classrooms, and included countless honors (as described in the Members' Passings notice on page 12 of this newsletter). Among his activities within the Society, he was an Honorary Member and recipient of the Manley O. Hudson Medal in 1993 for "scholarship and achievement in international law." It may seem curious that I would end this note about the launch of new Web sites with a remembrance of Sir Robert Jennings. I only met him twice, but I can recall a genial and seemingly insatiably curious man who, throughout his long life, thoughtfully remained optimistic about the good that human beings could achieve. This memory inspires and compels my hope that the Society can provide the tools to enable us to do our best in pursuit of the rule-based international order to which Sir Robert had contributed so much.

Charlotte Ku

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CASES OF NOTE: 2003–2004

From the U.S. Supreme Court and selected U.S. Courts of Appeals

"This term that just concluded was the most significant international law term in my lifetime. There were ten cases this term that had to do with international law."

Dean **Harold Koh**, Yale Law School,
July 13, 2004, National Public Radio
broadcast transcript.

The U.S. Supreme Court's 2003-2004 term had a relatively high number of cases involving international law, as Dean Koh observed. Among the issues addressed were the Geneva Convention and other treaties in the enemy combatant cases, and controversial jurisdictional questions in cases concerning Nazi-era theft of a family's art treasures and whether violators of certain international norms could be sued in U.S. courts. Several of these cases are cited and briefly described below, as are several significant cases decided by U.S. Courts of Appeals. The complete version of this Cases of Note, compiled by the editors of *International Legal Materials*, appears in the Timely Topics section of the new ASIL Website, at www.asil.org/inthenews/casesofnote.html. The electronic version includes live links to the cited decisions.

From the U.S Supreme Court

"Of course, we are interpreting our own Constitution, not those of other nations, and there may be relevant political and structural differences between their systems and our own. But their experience may nonetheless cast an empirical light on the consequences of different solutions to a common legal problem."

U.S. Supreme Court Justice
Stephen Breyer, dissenting in *Printz v. United States* 521 U.S. 977 (1997),
quoted July 13, 2004, National Public Radio.

United States (U.S.) Supreme Court: *Torres v. Mullin, Warden*, 124 S. Ct. 562 (November 17, 2003)

The Supreme Court rejected Mr. Torres' application to review the Court of Appeals' determination dismissing his claims for violation of diplomatic protection by consular notification under Article 36(1)(b) of the Vienna Convention on Consular Relations.

Mr. Torres argued that the Court of Appeals' determination was in conflict with International Court of Justice (ICJ) decisions that authoritatively interpret the Convention. Mexico filed an *amicus curiae* brief at the Supreme Court supporting Torres's request, pointing out that it has brought a case against the United States before the ICJ which claims, *inter alia*, that this court must apply the Vienna Convention to domestic law in Torres's case. Mexico further asked the Supreme Court to defer consideration of Torres' case until the ICJ issued a decision.

Justice Breyer and Justice Stevens dissented from denial of certiorari. Justice Breyer stated in his dissent that Article 36 of the Vienna Convention on Consular Relations required United States authorities (1) to tell an arrested foreign national, without delay, that he may have his nation's consul informed of the arrest, and (2) to tell the consul about the arrest. Further Justice Breyer said that "this case raises important questions concerning the relation between, on the one hand, the domestic law of the United States, and, on the other, decisions of the International Court of Justice interpreting the Convention." He also stated that "Depending on

how the ICJ decides Mexico's related case against the United States, and subject to further briefing in light of the decision, I may well vote to grant (review) in this case. Consequently I would defer consideration of this petition."

United States (U.S.) Supreme Court: *Olympic Airways v. Husain, individually, and as personal representative for the Estate of Hanson, deceased, et al.* No. 02-1348 (February 24, 2004)

The Supreme Court upheld the decision of the Ninth Circuit Court of Appeals in a wrongful death suit, holding an aircraft carrier liable for a passenger's death because of a failure to act under the Convention for the Unification of Certain Rules Relating to International Carriage by Air ("Warsaw Convention").

United States (U.S.) Supreme Court: *Republic of Austria et al. v Altmann*, Docket No. 03-13 (June 7, 2004)

The U.S. Supreme Court concluded that the Foreign Sovereign Immunities Act applies to conduct that occurred prior to the Act's 1976 enactment and prior to the United States' adoption of the "restrictive theory" of sovereign immunity.

The Respondent, Maria Altmann, filed an action in a United States District Court ("District Court") to recover six of her uncle's Gustav Klimt paintings that had been seized by the Nazis, or had been expropriated by Austria and its instrumentality, the Austrian Gallery, after World War II. Altmann asserted jurisdiction under § 2 of the Foreign Sovereign Immunities Act (FSIA), 28 U.S.C. § 1330(a). She further asserted that the petitioners, Austria and the Austrian Gallery, were not entitled to immunity under the FSIA's "expropriation exception," § 1605(a)(3), which expressly exempts immunity from certain cases involving "rights in property taken in violation of international law." The District Court determined that the expropriation exception covered the case and the U.S. Court of Appeals affirmed the finding. The Supreme Court upheld the decision of the lower courts, though on more limited grounds.

Justice Stevens noted that "[t]he principal purpose of foreign sovereign immunity has never been to permit foreign states and their instrumentalities to shape their conduct in reliance on the promise of future immunity from suit in United States courts."

United States (U.S.) Supreme Court: *Rasul et al. v. Bush, President of the United States* (No. 03-334) (June 28, 2004)

The U.S. Supreme Court held that U.S. District Courts have jurisdiction to hear petitions challenging the legality of detention of foreign nationals captured abroad in connection with armed conflict and incarcerated at Guantanamo Bay, Cuba. The U.S. Supreme Court also held that U.S. District Courts have jurisdiction to receive the complaint in *Al Odah et al. v. USA*, in which the petitioner invoked 28 U.S.C. § 1350, the Alien Tort Claims Act.

United States (U.S.) Supreme Court: *Hamdi et al. v. Rumsfeld, Secretary of Defense, et al.* No. 03-6696 (June 28, 2004)

On June 28, 2004, the U.S. Supreme Court vacated the judgment of the Court of Appeals for the Fourth Circuit and remanded the case for further proceedings. Justice O'Connor, delivering the opinion of the Court joined by the Chief Justice, Justice Kennedy and Justice Breyer, concluded that under due process a citizen detained by the U.S. government in the U.S. as an "enemy combatant" had to be given a meaningful opportunity to challenge

CASES OF NOTE: 2003–2004

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that detention before a neutral decision-maker, even though Congress authorized such a detention in the circumstances alleged in this case.

United States (U.S.) Supreme Court: *Sosa v. Alvarez-Machain et al.* (Nos. 03-339 and 03-485) (June 29, 2004)

The Supreme Court reversed the decision of the U.S. Court of Appeals for the Ninth Circuit (the “Ninth Circuit”), thereby dismissing Alvarez-Machain’s claims against U.S. Drug Enforcement officials pursuant to the Federal Tort Claims Act (FTCA), 28 U.S.C. §1346, and the Alien Tort Claims Act (ATCA), 28 U.S.C. §1350.

The Ninth Circuit previously held that “the unilateral, nonconsensual extraterritorial arrest and detention of Alvarez were arbitrary and in violation of the law of nations under [ATCA].” The court held that Alvarez could seek a remedy in federal courts pursuant to ATCA and FTCA for violations of the law of nations.

In regard to Alvarez-Machain’s claim under ATCA, the Supreme Court also reversed, finding that “[a]lthough we agree the statute is in terms only jurisdictional, we think that at the time of enactment the jurisdiction enabled federal courts to hear claims in a very limited category defined by the law of nations and recognized at common law. We do not believe, however, that the limited, implicit sanction to entertain the handful of international law *cum* common law claims understood in 1789 should be taken as authority to recognize the right of action asserted by Alvarez here.”

From U.S. State and Circuit Courts of Appeals

“I think it is fair to say that my presence here today reflects one of the fundamental changes we are seeing in the American legal landscape. That is, of course, the fact that our legal work at every level of government is being affected by international law and activities.”

William Howard Taft IV, Legal Adviser,
U.S. Department of State, addressing
the National Association of
Attorneys General, March 20, 2003.

United States (U.S.) Court of Appeals for the Second Circuit: *Flores et al. v. Southern Peru Copper Corporation* No. 02-9008 (August 29, 2003)

The U.S. Court of Appeals for the Second Circuit (the “Second Circuit”) dismissed the plaintiffs’ complaint for lack of jurisdiction and for failure to state a claim under the Alien Tort Claims Act, 28 U.S.C. §1350, thereby affirming the judgment of the District Court. The Second Circuit held that the instruments relied upon by the plaintiffs contained vague standards and “no limitation as to how or by whom these rights may be violated.” It concluded that the plaintiffs failed to establish the existence of a customary international law “right to life” or “right to health.” The Second Circuit noted that the only treaty relied on by plaintiffs that the United States has ratified is the non-self-executing International Covenant on Civil and Political Rights (ICCPR), opened for signature December 19, 1966 (999 U.N.T.S. 171, 6 ILM 368), but found that the ICCPR’s provision that “[e]very human being has the inherent right to life” was insufficiently definite to give rise to a rule of customary international law.

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ASIL MEMBERS SPEAK OUT ON AVENA

International Court of Justice: Case Concerning *Avena and other Mexican Nationals (Mexico/United States of America)*, No. 128 (March 31, 2004).

“We signed [the Vienna Convention] not because we want to cede our sovereignty but because we want to make sure our citizens are fairly treated when they travel or live in foreign countries.”

Anne-Marie Slaughter, ASIL member since 1986
April 1, 2004, *Los Angeles Times*

“While the World Court ruling, if followed, should lead to further judicial reviews, it will not likely spare many Mexicans from the executioner. In cases involving Mexicans and other foreigners, many American courts have already examined whether violations of consular rights prejudiced the outcome. They almost always say no.”

Douglas Cassel, ASIL member since 1991
April 11, 2004, *Chicago Tribune*

“The Court also clarified the meaning of review and reconsideration, a remedy first recognized in *LaGrand*. The Court held that review and reconsideration requires judicial review and that the clemency process alone is insufficient. Furthermore, the Court held that review and reconsideration requires a determination of whether the Vienna Convention violations caused actual prejudice to the defendant. Such determinations can only be made on a case-by-case basis.”

William J. Aceves, ASIL member since 1989
April 2004, *ASIL Insight*, Consular Notification and the
Death Penalty: The ICJ’s Judgment in *Avena*

“The [Oklahoma Criminal] Court [of Appeals] has recognized that it needs to comply with the ruling of the International Court of Justice because the United States agreed to comply with it. It is an absolutely correct but landmark decision.”

Donald Francis Donovan, ASIL member since 1980
May 14, 2004, *The New York Times*.

“Last week, Oklahoma judges considered a fundamental question—the status of international law in state courts in the U.S. And they made a paradigm-shifting decision. Not only did they properly treat a U.S. treaty as binding law, they also relied on a March decision of the International Court of Justice (ICJ) in *The Hague*.”

Noah Leavitt, ASIL member since 2002
May 24, 2004, *FindLaw’s Legal Commentary*.

To learn more about the *Avena* decision and its implications, see “*Avena* in an Oklahoma Court,” p. 1, and visit the ASIL’s “Resources on *Avena*” page in the Timely Topics section of the new ASIL Website (<http://www.asil.org/inthenews/avena.html>).

Notes from the President

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and the issues now remaining, and James Crawford added comments.

Chief among the remaining issues is how the U.S. will comply with the ICJ's direction that the United States "shall provide, by means of its own choosing," review and reconsideration of the conviction and sentence of the Mexican individuals, "so as to allow full weight to be given" to the violation of rights found by the ICJ.

"This is but one example of how international law issues are occupying a larger place on the agendas of U.S. jurists.... The question of how domestic institutions implement international law will be of increasing importance to American decision makers and to the public. This is a major focus of the Society's outreach programs."

—JAMES H. CARTER

The Oklahoma court, presumably on the basis of the analysis articulated by Judge Chapel in his concurrence, stayed the execution of Osbaldo Torres (one of the Mexican citizens on whose behalf the

Avena case was brought) at the eleventh hour and remanded for a judicial evidentiary hearing. The concurring opinion, which perhaps benefited from an amicus brief submitted by certain "International Law Experts and Former Diplomats" (which I commend to your attention and you can find in a special "Resources on Avena" section of the ASIL Web site, www.asil.org/inthenews/avena.html), sets out the bases for the binding effect of the ICJ's Avena Judgment on the State of Oklahoma and its courts under the Supremacy Clause. It goes on to recite the important history of U.S. practice, including sponsorship of and strong support for the Vienna Consular Convention and the Optional Protocol providing for binding ICJ determination of disputes. It addresses the subject of self-executing treaties in U.S. law and follows Avena in stating that complete application of a procedural bar (such as waiver) will not fulfill the ICJ's mandate to review and reconsider a conviction. The concurrence also notes the expressed views of U.S. spokesmen concerning the benefits of the Convention to Americans arrested abroad and the fact that the U.S. had been the first state to bring a case in the ICJ in reliance on the Optional Protocol (the Iranian Hostages case brought in 1979).

The concurrence was written expressly to comment on the statement by a dissenting judge of the Oklahoma court that the ICJ decision "is not binding" on the Oklahoma court. Indeed, the dissent styled the Avena Judgment's language ("shall provide, by means of its own choosing," review and reconsideration "so as to allow full weight to be given" to violation of the Convention) as a mere request from one court to another. Whatever may be the appropriate standard for post-Avena reconsideration of convictions, it is unfortunate (though perhaps not unusual) for the matter to be discussed thus. Judge Chapel's opinion is therefore most welcome.

Mr. Torres' sentence was commuted to life without parole by Governor Brad Henry on the day of the Oklahoma court's decision, so there will be no further proceedings in that action. However, the disposition of the other Avena cases should be closely monitored to see how our courts will comply and whether the U.S. Supreme Court will be called upon to decide the matter.

Three additional points strike me as noteworthy. First, this is but one example

of how international law issues are occupying a larger place on the agendas of U.S. jurists. In the 2003-2004 term, the U.S. Supreme Court has considered international law issues involving subjects such as detainees' rights, the Alien Tort Claims Act and others. The question of how domestic institutions implement international law will be of increasing importance to American decision makers and to the public. This is a major focus of the Society's outreach programs, to which so much attention is being devoted.

A second point is that the Society already has moved to provide information to the judiciary through our Judicial Outreach Program, whose Advisory Board is chaired by Justice Sandra Day O'Connor. Last year we published and distributed *International Law: A Handbook for Judges* to 1,600 federal judges. We also have conducted programs at national conferences and at many circuit conferences of federal judges. Efforts to reach state court judges also will be forthcoming.

Third, the Torres case well illustrates how the Society, without itself taking positions on disputed matters, can provide a forum for their discussion and a nexus for those who wish to join together to express opinions as international legal experts. We have provided information about the Avena case and related issues, including the role of international law in U.S. courts, in a variety of forms.ⁱⁱⁱ It also is perhaps not a coincidence that the authors of the amicus brief to the Oklahoma court include two former Presidents of the Society, the two current Editors-in-Chief and one former Editor-in-Chief of the *Journal* and other distinguished Society members.

James H. Carter

¹ *Osbaldo Torres v. Oklahoma*, No. PCD-04-442 (Ct. Crim. App. May 13, 2004), summarized at 98 AJIL 581-84 (2004).

² *Avena and other Mexican Nationals (Mex. v. U.S.)* (Mar. 31, 2004), 43 ILM 581 (2004).

³ These include, besides the Annual Meeting and the "Resources on Avena" section on the Web site: *ASIL Insights, International Law in Brief, ILM*, and the *AJIL* (see, in particular, Coulter Paulson, "Compliance With Final Judgments of the International Court of Justice Since 1987," 98 AJIL 434 443-48 (2004)).

EISIL, The Society's Web-Accessible Database, Arrives

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School of Law Library. Funding for EISIL was provided by the **Andrew W. Mellon Foundation**.

EISIL Wins “Best Website of 2004” award from the International Association of Law Libraries

In addition to its comprehensiveness, ease of use, and speedy retrieval of the right information, EISIL employs important value-added features, such as the ability to consolidate research results that can be downloaded, saved, printed, or e-mailed. Other interactive features, such as suggesting additions to the database or linking to the site, are made particularly easy. The combination of these features prompted the International Association of Law Libraries (IALL) to select EISIL as the winner of its coveted “Best Website of 2004” award.

“Winning the IALL award was a tremendous honor,” said Watson. “The aims for EISIL were ambitious, the technical issues considerable, and the diverse management needs challenging. To be recognized by your peers for putting it all together remains the highest compliment.”

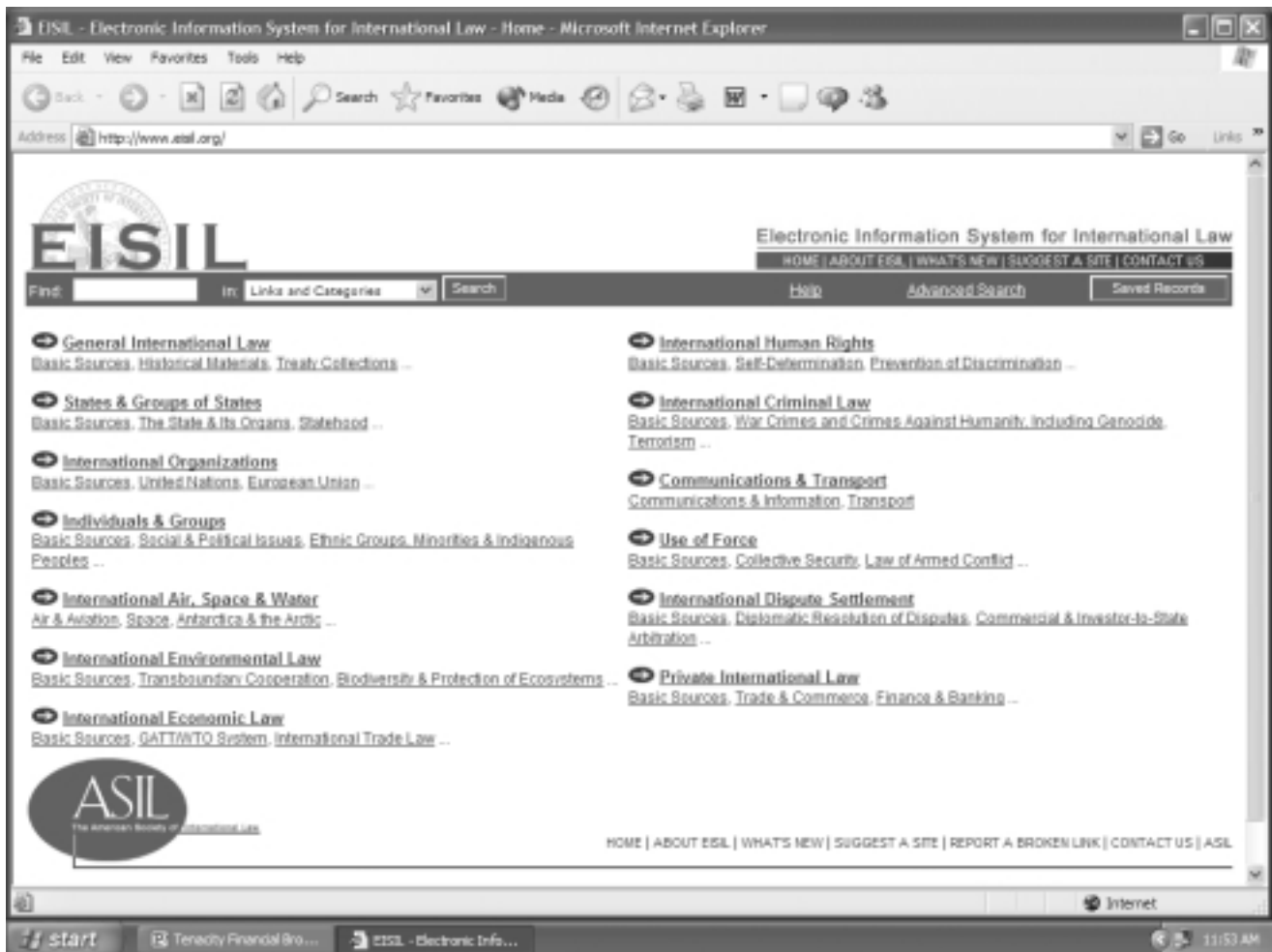
EISIL is a teaching as well as a research tool. To learn more, visit www.eisil.org, browse the site, or search for something you need or regularly use.



“EISIL it” buttons have been popular at ASIL meetings.

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"The Society has served as the venue for more than one impassioned exchange, and will do so again, as it contributes to important policy debates by drawing together a variety of views."
-- Charlotte Ku, 2003; Executive Vice President and Executive Director, 1994-present

What's New

Welcome to our newly redesigned Web site! We hope you like its new look and simplified navigation, and we welcome any suggestions or feedback you may have. Send your comments to Webmaster@ASIL.org.

Centennial Events

100 Plans are underway for the events and programs to mark ASIL's first hundred years, which have also been years of tremendous growth and change in International Law itself. To see our preliminary roster of activities, [click here](#)

ASIL Publications

The latest issue of *International Law in Brief* is now available; please [click here](#) to read it online.

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Behind the Headlines

Eight related World Trade Organization (WTO) arbitration decisions issued on August 31, 2004, set the amount of retaliation eight US trading partners (the "Requesting Parties") may impose against the United States for its failure to comply with a prior WTO Appellate Body ruling that the Continued Dumping and Subsidy Offset Act (CDSOA) – commonly known as the "Byrd Amendment" – violated WTO rules. [Read more...](#)

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NEW ASIL WEB SITE EASES ACCESS FOR MORE USERS

Since 1996, www.asil.org has been a leading source for electronic information about the topic and profession of international law. Periodic improvements over the years have kept the award-winning site useful to members and others interested in our expansive field.

After the last major site upgrade in 2001, three trends emerged that made it clear that the next change would be more consequential: more non-international law constituencies were needing international law information; more seamless and intuitive navigation to and through information was becoming the norm, as compared to institutional or structural approaches; and transactional interactivity, including e-commerce, was on its way to becoming standard.

The ASIL therefore sought to create an entirely new site that would improve accessibility and ease of use for general audiences and the public policy community as well as for members and experts. With support in part from the Ford Foundation (ASIL

Newsletter, May/July 2004, p.3), the new www.asil.org went live on September 20, 2004. Among the changes are a dedicated "Membership" section in the primary, horizontal navigation bar, and a separate Member Service Center button to help members take advantage of their benefits and available services.

Other useful features include a transactional or user-based set of navigation commands appearing in the vertical, left-side margin, rotating quotes on the home page, and sidebar margin items on "interior" pages that help place the international law content in context or relate it to current affairs. The Web site's design also uses a clean, consistent presentation with less need for extensive scrolling or reliance on multiple links to take you where you want to go.

We invite all members to browse through, work with, and otherwise make their way around the new www.asil.org. Let us know what you think by e-mailing your feedback to Webmaster@asil.org.

SOCIETY WELCOMES SIX NEW PATRONS

Judges Buergenthal and Caminos Among Supporters

In just the first eight months of 2004, the ASIL has welcomed six new Patrons: Richard Bilder, Thomas Buergenthal, Hugo Caminos, Mark Joelson, Lucy Reed, and Nassib Ziadé. Patrons share a special commitment to the Society and contribute \$10,000 to the new ASIL Endowment for International Law.

Richard B. Bilder is Foley & Lardner-Bascom Emeritus Professor of Law at the University of Wisconsin Law School. His areas of expertise include international and foreign relations law, international organizations, and admiralty law. Bilder joined the Society in 1956 and has been a long-time member of the Board of Editors of the *American Journal of International Law*, where he edits the Recent Books section.

Thomas Buergenthal has been a judge on the International Court of Justice since 2000. He served on the Inter-American Court of Human Rights and the Inter-American Development Bank's Administrative Tribunal, among other such postings, and taught at six U.S. universities, most recently at George Washington University Law School. Judge Buergenthal is Honorary President of the ASIL and became a member in 1959.

Hugo Caminos is an emeritus member of the ASIL, having joined the organization in 1945. Judge Caminos's career includes service on the International Tribunal for the Law of the Sea, as Under-Secretary for Legal Affairs at the Organization of American States, as Argentine ambassador to the United Nations and to Brazil, and as professor of public international law at the University of Buenos Aires, where he now is professor emeritus.

Mark R. Joelson is principal in his own firm in Washington, DC, specializing in international trade, arbitration, and antitrust matters. An ASIL member since 1972, Joelson currently serves on

the *International Legal Materials* Editorial Advisory Committee and the Society's Budget & Finance Committee.

Lucy F. Reed joined the ASIL in 1992 and currently serves on the Executive Committee as Vice President. A New York-based partner with Freshfields Bruckhaus Deringer, she specializes in international commercial arbitration. Reed is an arbitrator on the Eritrea-Ethiopia Claims Commission and served as a co-director of the Claims Resolution Tribunal for Dormant Accounts in Switzerland (the Holocaust tribunal).

Nassib G. Ziadé is Executive Secretary of the World Bank Administrative Tribunal, a post he assumed in 1997 following ten years' work at the Bank's International Centre for Settlement of Investment Disputes (ICSID). He is a Managing Editor of *ICSID Review: Foreign Investment Law Journal*. Ziadé joined the ASIL in 1987 and serves on the *International Legal Materials* Editorial Advisory Committee.

Eighty-eight members have become Patrons since the program began in the early 1960s. Patrons receive recognition, invitation, and other lifetime benefits in appreciation of their generosity. "Expanding interest in the program this year has been heartening," said Charlotte Ku. "We so need and appreciate their support and are delighted to see the Society's new endowment continue to grow."

A *Special Reminder*: Contributors to the ASIL's Second Century Campaign that concluded in 2002 can include their campaign gifts in their total commitment—if they become a Patron before the end of 2004. Please contact ASIL Deputy Director **Rick LaRue**, 202.939.5363 or rlarue@asil.org, for more information, or visit www.asil.org/aboutasil/asilpatrons.html.

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INTEREST GROUP SPOTLIGHT: THE LIEBER SOCIETY ON THE LAW OF ARMED CONFLICT

Inaugural Francis Lieber Prize To Be Awarded In 2005

The Francis Lieber Prize is a new honor that will be awarded annually by the American Society of International Law's Lieber Society on the Law of Armed Conflict to the author of an exceptional work in the field. The first Lieber Prize will be awarded in 2005.

Criteria: Any work published or accepted for publication in the field of the law and armed conflict. Entries may address such topics as the use of force in international law, the conduct of hostilities during international and non-international armed conflicts, protected persons and objects under the law of armed conflict, the law of weapons, operational law, rules of engagement, occupation law, peace operations, counter-terrorist operations, and humanitarian assistance. Other topics bearing on the application of international law during armed conflict or other military operations are also appropriate.

Age Limit: Competitors must be 35 years old or younger at the time of submission. They need not be members of the American Society of International Law. Submissions from outside the United States are invited.

Nomination: Any member of the Lieber Society may nominate a publication.

Submission: Submissions, including a letter of nomination, must be received by January 1, 2005. Electronic submissions are acceptable. Any work not already published should be accompanied by documentation indicating acceptance for publication. All submissions must be accompanied by contact data (e-mail, fax, phone, address). The Prize Committee will acknowledge receipt of the submission by e-mail.

Submission from *within* the United States must be addressed to: Andru E. Wall, 7417 Carriage Side Court, Jacksonville, FL 32256; WarriorLaw@hotmail.com.

Submissions from *outside* the United States must be addressed to: Professor Michael N. Schmitt, George C. Marshall European Center for Security Studies, Gernackerstrasse 2, 82467 Garmisch-Partenkirchen, Germany; Fax: +49 8821 750 688; schmittm@marshallcenter.org.

Prize: The Selection Committee will select one submission for award of the Francis Lieber Prize. The Prize consists of \$500 and a certificate of recognition. It shall also select two additional submissions for award of "Honorable Mention" certificates of recognition. The winner of the Lieber Prize, and those receiving Honorable Mention recognition, will be announced at the next annual meeting of the American Society of International Law.

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NEW FROM THE AMERICAN SOCIETY OF INTERNATIONAL LAW

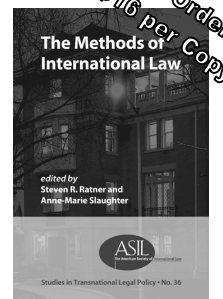
Studies in Transnational Legal Policy: THE METHODS OF INTERNATIONAL LAW

Fourteen leading scholars from around the world detail their respective approaches to international law. With each method applied to a specific international law question, such as limitations on a state's ability to prosecute foreigners for crimes committed abroad against other foreigners, *The Methods of International Law*, edited by Steven Ratner and Anne-Marie Slaughter, is an exceptional tool for classroom use.

Contributors include Kenneth W. Abbott, Antony Anghie, Hilary Charlesworth, B.S. Chimni, Jeffrey L. Dunoff, Martti Koskenniemi, Mary Ellen O'Connell, Andreas L. Paulus, Steven Ratner, Bruno Simma, Anne-Marie Slaughter, Joel P. Trachtman, Siegfried Wiessner, and Andrew R. Willard. This volume updates and expands upon *Appraising the Methods of International Law: A Prospectus for Readers*, a symposium published in the April 1999 issue of the *American Journal of International Law*.

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CENTENNIAL CORNER

The More Things Change...

The following articles appeared in the first volume (1907) of the *American Journal of International Law*:

- “The International Congresses and Conferences of the Last Century as Forces Working Toward the Solidarity of the World”
- “The Extent and Limitations of Treaty Making Power Under the Constitution”
- “Citizenship and Allegiance in Constitutional and International Law”

Five addresses at the first Annual Meeting of the Society in 1907 were given on the following topic:

- “The rights of foreigners in the United States in case of conflict between Federal treaties and State laws.”

...The More They Change The Same

What does the size of the ASIL's membership have in common with the membership dues rate? Both have grown at effectively the same rate since the Society was founded in 1906. In its first year, the Society had 125 members. Today, with 4,000 members, the size of the organization has grown 3,200 percent. So, too, the dues rate; what was \$5.00 in 1906 is now \$165.00, an increase of 3,300 percent. Coincidental as it may be, it is remarkable that the rate of change for these two unrelated membership features would only differ 3% over nearly 100 years.

Interest Group Spotlight: The Lieber Society on the Law of Armed Conflict

—continued from page 9

Francis Lieber, Patron Saint of the ASIL

by Andru E. Wall

On April 24, 1913, ASIL President Elihu Root declared at the Society's 7th Annual Meeting that, if the Society were to choose a patron saint, his only vote would be for Francis Lieber.¹ Fifty years earlier to the day, the U.S. Army had adopted a code of rules governing the conduct of armies in the field, known more commonly as the Lieber Code.

The 1863 Lieber Code marked the first codification of the laws of land warfare. Beyond the role it played in restoring the union of the United States, the Lieber Code influenced tremendously the development of the modern *jus in bello*. Frederic de Martens noted that “it is to the United States of North America and to President Lincoln that belongs the honor of having taken the initiative in defining with precision the customs and laws of war.” The German government largely adopted the Lieber Code to govern the conduct of its land forces during the 1870 war with France. The Lieber Code also formed the basis for similar works by the governments of Prussia (1870), The Netherlands (1871), France (1877), Russia (1877 and 1904), Serbia (1878), Argentina (1881), Great

Britain (1883 and 1904), and Spain (1893).² The Lieber Code served as an impetus for the Brussels Conference of 1874, the manual on the laws of war drafted by the Institute of International Law in 1880, and The Hague Conferences of 1899 and 1907.

Lieber was born in Berlin in 1800. While his childhood memories included Napoleon's entry into Berlin after Jena and the humiliation of the peace of Tilsit, Lieber's teenage years fighting for the Prussian Army at Waterloo and the battle of Namur undoubtedly influenced his Code even more. During the latter battle he was seriously injured and lay on the battlefield for a long time, expecting death to come at any moment. Lieber found himself in prison several times for political reasons between age 19 and 25; he earned a doctorate in philosophy at 20. He chose to immigrate to the United States, which he did in 1827 after spending a year in England. He first worked as a newspaper correspondent and encyclopedia editor before entering academe, initially as a professor at what has become the University of South Carolina. In 1857 he became a professor of history, political science, and international law at Columbia University, where he stayed until his death in 1872.

Root ended his speech about Lieber and the Lieber Code by remarking:

It stirs the imagination that the boy who lay wounded on the battlefield of Namur for his own country's sake and who languished in prison for liberty's sake and who left his native land that he might be free, should build his life into the structure of American self-government and leave a name honored by scholars and patriots the world over.³

Francis Lieber's memory is specifically honored through the ASIL interest group that bears his name—the Lieber Society on the Law of Armed Conflict. The Lieber Society's mission is to serve as the ASIL's focal point for the study of the law of armed conflict and other public international law related to the conduct of military operations. ASIL members interested in learning more about and becoming involved in the Lieber Society interest group may contact Andru Wall at andru.wall@navy.mil.

¹ All quotes in this essay are from ELIHU ROOT, ADDRESSES ON INTERNATIONAL SUBJECTS 89-103 (1916).

² LESLIE GREEN, THE CONTEMPORARY LAW OF ARMED CONFLICT 30 (2nd Ed., 2000).

³ *Id.* at 103.

ASIL-SPONSORED EVENTS

Selected Dates

(For more details, see the interactive Calendar on ASIL's web site at www.asil.org/events/index.html)

AJIL Board of Editors Meeting

November 5, 2004
Washington, DC

ASIL Executive Council Meeting

November 6, 2004
Washington, DC

ASIL International Economic Law Interest Group Annual Conference

February 24-26, 2005
Washington, DC

ASIL 99th Annual Meeting

“New World Order or a World in Disorder?
Testing the Limits of International Law”
March 30-April 2, 2005
Washington, DC

CASES OF NOTE: 2003–2004

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United States (U.S.) Court of Appeals for the Ninth Circuit: *Cheema and Kaur v. Immigration and Naturalization Service*, No. 02-71311 (December 1, 2003)

The U.S. Court of Appeals for the Ninth Circuit found that no evidence supported the Board of Immigration Appeals' decision that the petitioners posed dangers to the national security of the United States, thereby granting their petitions for withholding of deportation, and remanding their petitions for political asylum to the Board of Immigration Appeals (the "Board"). However, the Court found that the petitioners' acts within the United States could be qualified as terrorist activity and therefore upheld the Board's decision to deny mandatory relief on the basis of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"Torres's Vienna Convention claim was generated by the State of Oklahoma's initial failure to comply with a treaty. I believe we cannot fulfill the goal of a fair and just review of Torres's case if we refuse to look at his Vienna Convention claims on the merits."

—JUDGE CHARLES S. CHAPEL

United States (U.S.) Court of Appeals for the Ninth Circuit: *Gherebi v. Bush and Rumsfeld* (No. 03-55785 District Court No. V-03-01267-AHM) (December 18, 2003)

The U.S. Court of Appeals for the Ninth Circuit concluded that the United States exercises sole jurisdiction and all of the basic attributes of full territorial sovereignty over the Guantanamo Bay naval base in Cuba. It held that under *Johnson v. Eisentrager*, 339 U.S. 768 (1950), the U.S. district courts may exercise jurisdiction over a habeas corpus petition brought by the brother of one of the Guantanamo Bay detainees, and remanded the case to the U.S. District Court for the Central District of California.

United States (U.S.) Court of Appeals for the Eleventh Circuit: *Furnes v. Reeves* (No. 03-12826 District Court No. 02-02998- CV-TWT-1) (March 10, 2004)

The U.S. Court of Appeals for the Eleventh Circuit (the "Eleventh Circuit") concluded that a child was wrongfully removed or retained from Norway by the defendant in violation of the plaintiff's rights of custody under the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague

Convention"). Adopting a *de novo* standard of review, the Eleventh Circuit overruled the District Court's decision which denied the plaintiff's petition for the return of his child to Norway. At issue was whether the plaintiff's rights to his child under Norwegian law were the type of rights that entitled him to the return of his child under the express terms of the Hague Convention.

Oklahoma Court of Criminal Appeals: *Osbaldito Torres v. the State of Oklahoma* (No. PCD-04-442) (May 13, 2004)

The Oklahoma Court of Criminal Appeals (the "Court"), after consideration of Torres's latest application for post-conviction relief and other pleadings, ordered his execution date to be stayed pending further order of the Court. The Court granted Torres's request for an evidentiary hearing and remanded to the District Court of Oklahoma County for such a hearing on the following issues: "(a) whether Torres was prejudiced by the State's violation of his Vienna Convention rights in failing to inform Torres, after he was detained, that he had the right to contact the Mexican consulate; and (b) ineffective assistance of counsel."

Referring to the *Avena* decision, Judge Chapel noted that "*Avena* directs the United States to review and reconsider Torres's conviction and sentence in light of the consequences of the treaty violation. That review and reconsideration falls to this Court. This is the first state pleading in which Torres has raised his Vienna Convention claim, and normally this Court would consider it procedurally barred. However, while leaving the particular method of review and reconsideration up to the United States, *Avena* states that a complete application of procedural bar will not fulfill the mandate to review and reconsider the conviction, if procedural bar prevents the Vienna Convention claim from being heard. In order to give full effect to *Avena*, we are bound by its holding to review Torres's conviction and sentence in light of the Vienna Convention violation, without recourse to procedural bar. ...Torres's Vienna Convention claim was generated by the State of Oklahoma's initial failure to comply with a treaty. I believe we cannot fulfill the goal of a fair and just review of Torres's case if we refuse to look at his Vienna Convention claims on the merits."

About the ASIL

August-October 2004

The ASIL is a nonpartisan membership association dedicated to advancing the study and use of international law.

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News of members, meetings and events is welcome.

ASIL Newsletter reserves the right to edit any materials submitted.

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NEWS OF MEMBERS

Activities

Gonzalo Biggs has been appointed to the ad-hoc committee that will examine the annulment proceeding of the award rendered in the ICSID case, *Repsol YPF Ecuador S.A. v. Petroecuador*.

Michael W. Hawkins, a partner in the Cincinnati law firm of Dinsmore & Shohl and a member of the Board of Governors of the American National Red Cross, recently attended the British Red Cross Summer School on International Humanitarian Law at Magdalene College, Cambridge University, which focused primarily on the Hague and Geneva Conventions.

David Wippman has been appointed Associate Dean of Academic Affairs at Cornell Law School. He is a professor at the Law School whose areas of expertise include public international law, human rights, and the laws of war.

Awards and Honors

David Attard, a life member of the Society, was conferred the grade of *Chevalier dans l'Ordre National de la Legion d'Honneur* by the government of France. He continues to direct the UN International Maritime Organization's International Maritime Law Institute and is professor of international law at the University of Malta.

Surya P. Subedi, a member of the Society since 1992, recently was made an honorary Officer of the Most Excellent Order of the British Empire (OBE) by Her Majesty the Queen of Great Britain. After teaching international law at three British universities, Subedi recently took up the position of Professor of International Law at the University of Leeds Law School. A citizen of Nepal, Subedi was decorated by the King of Nepal in 1998 by a high state honour (Order of Gorkha Daxin Bahu III) for his services to international Law. He holds a D.Phil. in Law from the University of Oxford and has taught international law in The Hague, New York, and Kathmandu, as well as in Sweden. He has advised and represented Nepal in various international meetings and conferences, including meetings of the United Nations, and was Nepal's candidate for election to the UN International Law Commission in 2001. He is General Editor of the *Asian Yearbook of International Law*.

Passings

Sir Robert Yewdall Jennings was born in 1913 and died in Cambridge on August 4, 2004. A well-known international lawyer and academic, he commanded worldwide respect and admiration. Among his many achievements, Sir Robert was a Fellow at Jesus College, Cambridge, from 1939 to

1982; called to the Bar at Lincoln's Inn in 1943; Whewell Professor of International Law, Cambridge University (1955-1982); and Judge of the International Court of Justice from 1982 to 1995, including service as its President (1991-1994). His judicial opinions were known for their clarity and good sense. He worked hard at the ICJ to maintain the Court's unity and cohesion and used his influence on the side of moderation. After completing his presidency on the Court he returned to England but remained associated with the Court as a judge ad hoc. He received numerous academic honors, among them the presidency of the Institute of International Law; honorary doctorates from Hull, Leicester and the Saarland, as well as Oxford and Cambridge; and the Hudson Medal of the American Society of International Law. Leicester also gave his name to a chair in international law. He is survived by his wife Christine and three children.

Robert Rosenstock, the longest-serving member of the U.S. Mission to the United Nations until his retirement in 2002, died in Austria in September 2004. He was the senior legal adviser of the U.S. Mission, where he served since 1966. He represented the United States over the years in the Sixth Committee of the UN General Assembly, and also served with distinction as a member of the UN International Law Commission, of which he was President in 2003.

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