

MEMORANDUM

TO: Executive Council, American Society of International Law

FROM: Jeffrey L. Dunoff, Chair, 2018-19 ASIL Honors Committee (on behalf of Committee Members Marcella David, Harold Hongju Koh, Judge M. Margaret McKeown, Sergio Puig)

DATE: November 28, 2018

SUBJECT: ASIL Honors Committee Report and Recommendation

This memorandum constitutes the 2018-19 ASIL Honors Committee report and recommendations to the Executive Council for the 2019 recipients of three ASIL honors. These awards are:

- The **Manley O. Hudson Medal**, awarded to a distinguished person of American or other nationality for outstanding contributions to scholarship and achievement in international law. The 2018 recipient was Peter Trooboff.
- The **Goler T. Butcher Medal**, awarded to a distinguished person of American or other nationality for outstanding contributions to the development of effective realization of international human rights. The 2018 recipient was Rosalie Silberman Abella.
- The **Honorary Membership Award**, awarded to an individual of American or other nationality who has rendered distinguished contributions or service in the field of international law. The 2018 recipient was Olufemi Elias.

The Honors Committee was constituted by ASIL President Sean Murphy in the summer of 2018. At the President's request, Marcella David, Harold Hongju Koh, Judge M. Margaret McKeown, Sergio Puig and Jeffrey L. Dunoff agreed to serve as members. An announcement requesting nominations was published by the Society in its Newsletter and biweekly e-bulletin, as well as on its website. In addition, Committee members reached out to ASIL members to solicit nominations. The Committee received nominations in response to these calls, and extends its appreciation to the ASIL members who took the time to submit nominations. The Committee also added several new nominations. Taken with other nominations received in recent years, the Committee had a highly distinguished pool of nominees to consider for each of the three awards. The Committee studied material supporting all nominations and discussed the nominations at length by teleconference and email. The Committee took under consideration the guidance of President Sean D. Murphy and Executive Director Mark D. Agrast, and would like to thank each of them for their thoughtful input.

The Committee makes the following unanimous nominations to the Executive Council.

Manley O. Hudson Medal

Stephen G. Breyer

Over the course of an extraordinary legal career, Justice Stephen Breyer has been a path-breaking legal scholar, an accomplished and widely-respected government official, and a distinguished jurist, including service on the Court of Appeals for the First Circuit and, since 1994, as an Associate Justice on the United States Supreme Court. During his time on the bench, in both judicial and extra-judicial writings, he has been a leading and influential voice in debates over the appropriate use of international and foreign law in U.S. courts, the extraterritorial reach of domestic law, and the complex relationships between protecting civil liberties and ensuring national security.

After completing his legal studies, Breyer clerked for Justice Arthur Goldberg during the 1964-65 term, and then served as special assistant to the U.S. Assistant Attorney General for Antitrust. In 1967, he joined the faculty of Harvard Law School, where he taught until 1994. While at Harvard, his scholarly focus was on the fields of antitrust and, later, administrative law. In the words of one leading scholar, Breyer's administrative law writings helped to transform the field and "usher[] administrative law into the modern era." In 1975, Breyer returned to Washington to spend a sabbatical year as special counsel to a subcommittee of the Senate Judiciary Committee, where he worked on international antitrust issues, among others. In 1980, Breyer was nominated by President Carter, and confirmed by the U.S. Senate, to serve on the United States Court of Appeal for the First Circuit, where he became Chief Judge in 1990. In 1994, President Clinton nominated, and the U.S. Senate confirmed, Breyer to serve as an Associate Justice on the U.S. Supreme Court.

During his nearly quarter-century on the Court, Breyer has been a frequent and astute commentator on questions concerning how domestic courts can best address increasing levels of international interdependence and navigate the tensions between the global and the local. Although these forces are often presented as antithetical, Breyer has carved out a nuanced position that views both forces as essential features of the modern world and seeks to give each appropriate judicial regard. By way of example, he has authored important and influential opinions analyzing the circumstances under which U.S. antitrust law has extraterritorial effects, *Hoffmann-LaRoche v. Empagran* (2004); using foreign practice to support the argument that death penalty is "unusual," *Glossip v Gross* (2015) (dissent); developing an analytic framework for determining when treaties are self-executing, *Medellin v. Texas* (2008) (dissent); discussing circumstances when the ATS has extraterritorial effect, *Kiobel v. Royal Dutch Petroleum* (2013) (concurrence); holding that the "first sale" doctrine applies to copies of copyrighted works lawfully made abroad, *Kirtsaeng v. John Wiley* (2013); reviewing the experience of other federal states when considering how to reconcile the practical need for central authority with the democratic virtues of more local control, *Printz v. US* (1997) (dissent); declaring that criminal defendants may raise claims that state officials violated the Vienna Convention on Consular Relations, *Sanchez-Llamas v. Oregon* (2006) (dissent); and analogizing First Amendment doctrine with decisions of European Court of Human Rights and Canadian Supreme Court, *Nixon v Shrink Mo. Gov't Pac* (2000) (concurrence). As this non-exhaustive list suggests, many of Breyer's most important and enduring contributions on the bench have been in separate opinions which develop a distinctive and sophisticated view of the complex interrelationships between the global and the local. Among other claims, Breyer has cogently argued in favor of reviving the use of

foreign and international law precedent to inform U.S. constitutional interpretation in cases involving parallel rules found in different jurisdictions, in circumstances where empirical lessons can usefully be transplanted from one jurisdiction to another, and in disputes involving interpretation of an evolving community standard.

Breyer has elaborated these ideas most fully in *THE COURT AND THE WORLD: AMERICAN LAW AND THE NEW GLOBAL REALITIES* (2016). The book's central argument – that globalization has made engagement with foreign and international law unavoidable – is carefully developed via lucid yet accessible analyses of Supreme Court precedent in cases involving international transactions, alleged human rights violations occurring abroad, and wartime cases involving restraints on civil liberties. The volume highlights the costs that judicial isolationism brings in an increasingly interconnected world. Breyer's arguments are distinguished by the traits that characterize the entirety of his legal career: a thoroughness in testing the value of legal doctrine against its real-world consequences; an even-handedness in exploring the difficulties of both sides of an argument; and an effort to persuade readers by providing all the facts needed to reach his conclusion. As one scholar noted “[t]here is no better or wiser source on the intersection of American jurisprudence and international law than Justice Stephen Breyer. ... [H]is attention to both principle and common sense points the way for harmonizing national and global concerns while strengthening law and reason.”

Breyer's interest in international matters long predates his time on the bench. After receiving his undergraduate degree at Stanford in 1959 and prior to entering law school, Breyer studied at Magdalen College at Oxford University as a Marshall Scholar. After his second year in law school, he worked as a summer associate in the Paris office of a U.S.-based law firm. During this time, he taught himself French, among other ways, by reading all seven volumes of Proust's *A la recherche du temps perdu* (*Remembrance of Things Past*) in the original, keeping track of new vocabulary words on index cards. In addition, prior to joining the judiciary, Breyer taught as a visiting professor at the University of Rome and the College of Law in Sydney, Australia. Breyer's contributions have been widely recognized; he holds one of the foreigners' seats on the French Academy of Moral and Political Sciences, and a prominent Washington, D.C. think tank sponsors the “Justice Stephen Breyer Lecture Series on International Law” that explores critical issues at the intersection of international law, justice, and foreign policy and seeks to offer effective solutions for a globalized world.

In addition to his writings about international and comparative law, Breyer has authored several other books during his years on the Court, including *AGAINST THE DEATH PENALTY* (2016), *MAKING OUR DEMOCRACY WORK: A JUDGE'S VIEW* (2010), *REGULATION AND ITS REFORM* (2009), *ACTIVE LIBERTY: INTERPRETING A DEMOCRATIC CONSTITUTION* (2008), and *ECONOMIC REASONING AND JUDICIAL REVIEW* (2004). Several themes run across these works, including the primacy of democratic participation and limited role of courts in majoritarian political systems, the virtues of interpretative methodologies that are attentive to the purposes of legal provisions, and an acute attention to the practical implications of judicial decisions.

For his outstanding and enduring contributions as a jurist, his eloquent and effective arguments for the thoughtful integration of domestic and international legal norms, his illumination of the new challenges that 21st-century global engagements pose, and much more, we conclude that Stephen Breyer is eminently worthy of receiving the Hudson Medal.

Goler T. Butcher Award

Zeid Ra'ad Al Hussein

Zeid Ra'ad Al Hussein recently completed a term as the UN High Commissioner for Human Rights. He was the sixth High Commissioner, and the first Asian, Muslim, and Arab to serve in this position. In this role, he was an outspoken critic of human rights abuses in dozens of countries and served, in the words of one observer, “as ‘conscience for the world,’ eloquently using his voice to become ‘a sort of nightmare’ for dictators, demagogues, and anti-democratic foes.”

His term as High Commissioner was preceded by many years of distinguished diplomatic service. Zeid served as Jordan’s Permanent Representative to the United Nations from 2000 to 2007, and again from 2010 to 2014. From 2007 to 2010, Zeid was Jordan’s Ambassador to the United States of America. In addition, he served as Jordan’s Deputy Permanent Representative to the UN, with the rank of Ambassador, from 1996 to 2000.

Zeid has also been deeply involved with the International Criminal Court. He chaired the negotiations regarding the elements of individual offenses amounting to genocide, crimes against humanity, and war crimes. In September 2002, Zeid was elected the first President of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Over the next three years he oversaw the election of the first 18 judges, mediated selection of the Court’s first president, and led efforts to name the Court’s first prosecutor. In 2009, he was asked to chair the closing stages of the intricate negotiations over the crime of aggression, which successfully concluded with consensus in Kampala, Uganda, in June 2010.

In 2012, Zeid was chosen by UN Secretary-General Ban Ki-moon as one of five experts to serve on his “Senior Advisory Group” regarding reimbursements to countries contributing peacekeeping troops. He also chaired the Consultative Committee for the United Nations Development Fund for Women (UNIFEM) and led an effort to establish greater strategic direction for the Fund (2004-2007).

Zeid holds a Bachelor of Arts from The Johns Hopkins University and a Doctorate in Philosophy from Cambridge University (Christ’s College).

For his outstanding and sustained work in advancing human rights, the Committee nominates Zeid Ra'ad Al Hussein for the Goler T. Butcher Award.

Honorary Member

Mónica Pinto

The Committee recommends that the Honorary Membership Award be given to Mónica Pinto for her robust and sustained work to advance human rights and for her exemplary blend of scholarship and service.

Mónica Pinto has had an outstanding career as an academic, government official, jurist and international official. She recently completed a term as Dean at the University of Buenos Aires Law School, where she teaches international law and international human rights law.

She has written widely in these areas, and is the author of five books and over one hundred articles and book chapters. She has been a Visiting Professor at Columbia Law School (2001, 2003), Université Panthéon-Assas Paris II (1997, 2005, 2009), Université de Rouen (2007), and Université Panthéon-Sorbonne Paris I (2008). In addition, she taught the Public International Law class in the 2007 Summer Programme of the Hague Academy of International Law, and in 2000 she was the Director of Studies for the French-speaking Seminar in the Public International Law Session.

She has held a number of positions in the United Nations system, the most recent of which was as Special Rapporteur on the Independence of Judges and Lawyers (2015-16). Previously she held the mandates of independent expert on the situation of human rights in Guatemala (1993-1997) and Chad (2004-2005), and served on the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Matter of Human Rights (2006-2011). In addition, she served on the Advisory Committee on Nominations for the International Criminal Court (2013-15).

She sits on the administrative tribunals of the World Bank and the Inter-American Development Bank. She has also appeared as legal counsel and/or expert before different human rights bodies, arbitral tribunals and the International Court of Justice.

Mónica Pinto is an Associate Member of the *Institut de Droit international* and has been awarded the French *Ordre national du Mérite*. She received the Human Rights Prize from B'nai B'rith in Argentina in 2009; the "Margarita de Ponce Award" by the Union of Argentine Women in 2012; and the Platinum Konex Prize in International Law 2016. She has been active in the Argentine Council for International Relations and the International Law Association.

For all of these accomplishments and more, the Committee nominates Mónica Pinto for the Honorary Membership Award.

The Committee respectfully asks that the Executive Council approve these recommendations and thanks the Council for its consideration.