

Celebrating the Triumph of Law Over Conflict
THE VIENNA CONFERENCE & RULE OF LAW CELEBRATION REPORT

During October 21-25, 2009, the World Jurist Association hosted a conference entitled *The Role of the Legal Profession in Conflict Resolution & Reconciliation After the Fall of the Iron Curtain*. The Conference opened in Vienna, Austria with participants from 25 countries, speakers from every region of the world, and nearly 145 distinguished delegates.

Opening Ceremony

At the Opening Ceremony, WJA President **Valeriy Yevdokymov** (Ukraine) welcomed the delegates and speakers. Mr. Yevdokymov explained that the WJA was in Vienna to celebrate two important events – the opening of the Iron Curtain 20 years prior and the erection of the WJA’s Rule of Law Monument 10 years prior. Mr. Yevdokymov called on the delegates to recognize that the role of the legal profession to reconcile conflicts. He then noted the growth of the WJA and invited everyone in attendance to participate more actively.

The delegates were also warmly welcomed by **Ivo Greiter** (Austria), National President, WJA. Mr. Greiter described to us the actions of 1000 citizens who, 20 years ago, held peaceful demonstrations in Leipzig, Germany every Monday to promote freedom. These 1000 individuals were in danger of being arrested and imprisoned and still they took the risk and took action to achieve their goals. It is from their example, Mr. Greiter explained, that we can see the opportunity each of us has to work for freedom and liberty.

Panel I: Maintaining the Peace – What Have We Learned & The Role of International Institutions

The first panel, *Maintaining the Peace – What Have We Learned & The Role of International Institutions*, was chaired by **Dr. Karl-Georg Zierlein** (Germany), WJA UN Special Representative; Dr. jur. former Director at the German Federal Constitutional Court . He noted that Vienna is home to many bodies of the UN and that non-governmental institutions also play an important partnership role in supporting and fostering international institutions.

Professor Kwang-Jun Tsche (South Korea), Director Center for International Affairs Kyung Hee University, spoke about reconciliation between North and South Korea. Trauma and hatred, from the three year war that devastated the peninsula and left more than a million people dead, dominate all aspects of current relations between the two countries. One of the questions that has dominated politics is how to administer transnational justice.

Professor Tsche then spoke about the legislative and judicial steps being taken in South Korea. Under an earlier authoritarian-military regime, the government was accused of torture and many people were found dead. Accusations against the government were treated as attacks on the military’s authority. However, with the installation of a democratic government, new laws were passed to protect persons fighting for freedom.

Professor Tsche then spoke of the truth commissions in South Korea and a case involving North Korean spies who were tortured by state authorities and forced to change state allegiance before being killed. The truth commissions found that many North Korean spies were killed after they served their sentence because the South Korean government feared the spies would recommit their crimes. The truth commission was dissolved in 2004, leaving a number of unresolved cases.

He concluded that the attempt by South Korea to rectify past wrongs is a step forward. They have chosen to face the past and expose it rather than simply forget it. From this, South Korea has gained a broader perspective for democracy.

Ethia Simha (Israel), Ethia Simha Law Office, began her presentation by quoting from the WJA's 2003 Sydney Declaration "ever since it's creation, the WJA has ... asserted that a durable and stable global peace must be founded on the Rule of Law." She noted that although states must take certain steps to ensure security, security and public order must be within the framework of law. There is no security without the Rule of Law. She remarked that the hour of a democracy's glory is revealed in a moment of defending rights while the State itself is being threatened.

She briefly discussed the history of the Middle East peace process (from 1977 onward). In 1977 the President of Egypt, Anwar Sadat, and the Prime Minister of Israel, Menachem Begin, declared an end to war and bloodshed and today these two nations are slowly moving forward towards that goal. However, she noted, we should also understand that after so many years of conflict there is a deep seated hatred embedded between the two countries. She also spoke of the 1995 Peace Accord between Israel and the Palestinian Liberation Organization that was aimed at achieving a just and lasting peace.

Ms. Simha looked at the cultural legacy of peace in the Middle East and noted the Bible, the New Testament, and the Koran all seek peace. Ms. Simha emphasized that it is the role of the legal community to help negotiating parties find a way through the maze of disagreements. We, as jurists, are tasked with helping to actualize and secure the idea of peace.

The floor was then opened to comments and questions from our delegates. **The Honorable Bola Ajibola** (Nigeria) took the opportunity to point out that dialogue is the key to bringing nations together. He also called on the South Koreans to remember that poverty and hunger in North Korea must be addressed in the search for peace. With regards to Israel, he called on jurists, not just Palestinians and Jews but also Muslims and Christians, to come together on the issues. **Sylwester Pieckowski** commented that he believes that a two-state solution to the Israel-Palestinian crisis will be a necessary component of peace. **Dr. Franklin Hoet Linares** (Venezuela) called on the WJA to develop an agenda to continue a peace dialogue in the Middle East. **Ronald Greenberg** (USA) requested that WJA members develop relationships with lawyers and law professors from these flashpoint regions and bring them into WJA dialogue. **Mr. Petr Melnik** (Ukraine) suggested that the WJA should turn its focus to working with law students and young lawyers who will be the next leaders of our mission. A global initiative to bring together students around the world would greatly enhance the dialogue on conflict resolution and reconciliation. Panel Chair, Dr. Zierlein commented that the WJA has always remained non-political but it still must engage in policy-making.

Panel II: Legal Education in Conflict Resolution

The second panel, *Legal Education in Conflict Resolution*, was chaired by **The Honorable Deon van Zyl** (South Africa), Inspecting Judge, Judicial Inspectional Services. Judge van Zyl noted the need for basic training in mediation. He explained that, in his role as inspecting judge of prisons in South Africa, he gets to meet with prisoners to determine how they are being treated. Reasonableness, he proclaimed, is a key element of justice; and the new government in South Africa has approached justice as restorative rather than retributive. His office handles disputes between authorities and prisoners that cannot be mediated by independent visitors of the community. So far, his office has resolved every single dispute brought before it.

The first panelist, **The Honorable Justice Opeyemi O. Oke** (Nigeria), Judge of the High Court of Lagos State, explained that the traditional approach of educating law students as ‘zealous advocates’ is giving way to a new model referred to as ‘conflict resolution advocacy.’ This, legal education must be shaped and designed in such a way that it will produce practitioners who are well equipped with skills in conflict resolution. The conflict resolution process can offer better solutions to the needs of society at large. Justice Oke concluded that by adopting alternative dispute resolution methods to resolve conflict, we can bring lasting peace all over the world and improve relationships both between individuals and between countries.

Dr. Franklin Hoet Linares (Venezuela), WJA President for the Americas, Hoet Pelaez Castillo & Duque, then spoke on the public interest in the independence of lawyers. He noted that general practicing attorneys are being replaced by legal specialists in response to the growing complexity and natural lack of a stable legal structure. The difference, he claimed, between lawyers and other professionals is that the lawyer is an essential element for the administration of justice. A lawyer, as is established by the Code of Behavior in the European Union, must serve the interests of justice as much as those rights and freedoms that had been entrusted for him to impose and defend. He concluded that between truth and stability, truth must prevail; and, between truth and truth, we must choose stability.

During the question and answer session, Dr. Hoet explained that a course on mediation cannot be started without first having a course on negotiation to learn about persuasion and how to get two contesting parties to be willing to work with each other for a solution. Both Justice Oke and Judge van Zyl noted that mediation has an inherent quality of empathy for the parties and leads to a solution that is in the best interest of everyone.

Welcome Reception

The Welcome Reception was sponsored by **Mag. Claudia Bandion-Ortner**, Federal Minister of Justice of Austria. The delegates were welcomed at the Kleiner Festaal Palais Trauston in the Ministry of Justice. The Minister warmly welcomed all of the delegates from around the world. Mag. Bandion-Ortner was a judge prior to being appointed Minister and so she extended a special greeting to all the judges who had gathered from around the world.

Panel III: Fostering Conflict Resolution & Reconciliation

The third panel, *Fostering Conflict Resolution & Reconciliation*, was chaired by **Ronald M. Greenberg** (USA), WJA Immediate Past President, Berkes Crane & Seal, LLP. Mr. Greenberg briefly considered the role that conflict resolution can play in developing true peace by giving individuals the tools necessary to trust each other and allow for personal and commercial transactions.

Sylwester Pieckowski (Poland), Chadbourne & Parke, spoke first and commended the little microcosm of the United Nations that was gathered at the Conference. He then called the Fall of the Iron Curtain one of the most important revolutions in our time because it provided freedom and human dignity to the peoples of Eastern Europe. These peoples were able to regain the opportunity in order to render justice and the potential of the private sector. Mr. Pieckowski explained that alternative dispute resolution (ADR) can supplement State court systems to render justice in a more efficient manner. However, the European structure has led their court systems to remain very insulated to new initiatives.

Mr. Pieckowski credits congestion in the court system with having led the movement for ADR. Justice delayed is justice denied. About ten years ago, Poland studied the Illinois (USA) system to understand how courts introduced, trained, and implemented mediation. It was determined that the Polish system lacked the necessary infrastructure and that one must be built. He feels that mediation is so successful when implemented properly that it will be the leader of ADR. However, you cannot do mediation without competent mediators who have had extensive and repetitive training. Poland, also, needs institutions such as mediation centers to ensure quality and standards as well as provide a venue for mediation. Mr. Pieckowski concluded that in order to have successful mediation, we must educate judges, lawyers, and business persons about the benefits of mediation.

Next to speak was **Daniel McFadden** (United Kingdom), Senior Mediator, Office of the United Nations Ombudsman; Director, Asia Initiative, Centre for Effective Dispute Resolution. Mr. McFadden spoke about the internal justice system in the UN. In 2006, a group of eminent judges were asked to look at the system; they concluded that the internal system is a mess – not transparent and very slow. A new mediation division was started on July 1, 2009 and is intended to be an important part of the new internal justice system with 15 new independent judges.

Mr. McFadden also explained why Hong Kong is another exciting story of mediation. During the last three or four years, many lawyers and judges have been trained to understand mediation and/or to work as mediators. Hong Kong introduced a new Civil Justice Reform (CJR) aimed at changing the rules in the mediation system; the CJR was influenced by the United Kingdom, Australia, and the United States. He clarified that China has been using mediation for thousands of years and the recent training and legislation is just meant to develop the core that is already there.

Lucie Barron (USA), ADR Services Inc., concluded the panel by discussing the evolution of Alternative Dispute Resolution from a business point of view. She explained how mediation got its start in California; she claimed that California's mediation system has been used as a model across the US and around the world. In 1993, California passed Assembly Bill 401 allowing judges on the civil side to order cases out to mediation when the disputed amount was \$50,000 or less. In the beginning, over 55% of cases reached some kind of resolution (only 12% of judicial cases generally settle). Today almost every case in California settles before the trial process. Every single case in California goes through a mediation procedure before reaching litigation.

Ms. Barron noted that the market has driven mediation because the business community is very concerned about the costs of litigation. Trials are risky for businesses because of crazy jury verdicts. Advantages of mediation include that it is fast, expedient, cheaper than trial, and the funds are dispersed quickly. She then briefly explained that there are no licensing requirements for mediators but that often mediators need to be attorneys, have interpersonal skills, and be likeable, intuitive, have good judgment, and demonstrate mediation skills and experience. Good mediators, she believes, are born not trained.

Panel IV: International Instruments in Private Sector Conflict Resolution

The fourth panel, *International Instruments in Private Sector Conflict Resolution*, was chaired by **Enrica Ghia** (Italy), WJA President for Europe, Ghia Law Firm. Ms. Ghia stated that she is firmly convinced that alternative dispute resolution is the future of the legal profession.

Christoph Liebscher (Austria), Wolf Theiss, spoke about commercial arbitration and explored the connection between private international commercial arbitration and international

law. He explained that because arbitration is not binding in many countries, often there is a need for assistance from the State court. Either the parties or another appropriate mechanism must determine the seat for the arbitration – which in turn determines the laws to be applied. Mr. Liebscher also noted that sometimes courts are needed to enforce arbitration decisions. International law is needed when a party files suit in a country despite an arbitration clause. Today, the number of things that cannot be arbitrated is shrinking.

The Honorable Jingang Fang (China), Judge, Supreme Peoples Court of China, discussed conflict resolution mechanisms in China. He discussed different types of mediation practice used in China: civil mediation, judicial mediation, arbitration mediation, court mediation. Judge Fang explained that in many non-Western cultures there is a desire to create a win-win situation and that China's dispute resolution mechanisms are effective and successful.

Civil mediation is done completely outside of the court system and solves neighborhood conflicts through trained volunteers from neutral communities. Civil mediation is a completely free service that considers community concerns in finding a better way to solve conflicts.

Court connected mediation is a confidential process in which a neutral person assists the litigants in reaching a written and signed agreement. If an agreement is reached it is filed with the courts and becomes binding. Some parties worry that these decisions might be used against them if they decide to go to court at a later date.

The Rule of Law Celebration ♦ St. Margarethen, Austria

The WJA was born in a time of a great test to the Rule of Law – the Cold War. In 1963, when the first WJA Congress was held in Athens, geopolitical tensions could not have been higher. The world remained on the brink of violence, the gap between developed and developing nations was growing, and the greatest divide – the Iron Curtain – split Europe, and as a result the world into two. It was with this backdrop that the WJA was created with the mission of “world peace through the Rule of Law.” Throughout its history, the WJA has brought together the greatest minds of the legal profession to think about, discuss, and proffer ideas to resolve conflicts and foster reconciliation. There is no greater example in modern times of the success of Rule of Law, human rights, and individual dignity over violence, oppression and division than the Fall of the Iron Curtain. It is for this reason, that the WJA selected the Austrian-Hungarian border and the town of St. Margarethen, Austria as the site for its Rule of Law Monument. This monument, unveiled in 1999, stands at the very place where the first cut in the Iron Curtain was made in 1989, without violence, with the cooperation of the neighboring towns, and through the leadership of individuals who were determined to fight violence with peace.

On Saturday, October 24, 2009 St. Margarethen hosted the WJA and all of the Vienna Conference delegates and their guests for a celebration and rededication of the Rule of Law Monument. Built of the stone from the local quarry, the WJA monument reads “Pro Justitia Pace Libertate Mortuus,” meaning “For those who died for Justice, Peace and Liberty.” On the reverse side are the names of the individuals who have expressed their support for the work of the WJA through their donation.

The delegates were welcomed by **Dr. Ivo Greiter** who introduced first **Mr. Eduard Scheuhammer**, Mayor of Marktgemeinde St. Margarethen. He provided the delegates with a history and story of the beautiful township in which they had gathered. Poignantly he told how the town lived in the shadow of the watchtowers but nowadays the landmines have been removed and the streets have been reopened. This has created a new feeling of hospitality amongst the people and a new cultural atmosphere. He, then, invited everyone to join him after

the celebration for food and drinks – particularly wine from the region. The final speaker, was **KR Ing. Andreas Waha**, who was the Mayor of St. Margarethen in 1989 at the time of the opening of the border with Hungary. He carefully described the history that led to the picnic on the border and the generous welcoming spirit that was extended by the townspeople as the refugees from East Germany poured across the border by the hundreds on that historic day.

A full report of the Conference, information on the workpapers presented and information on the Rule of Law Monument are available on the WJA website: www.worldjurist.org.

Note of Thanks

The WJA wishes to thank the following persons and entities, without whom the Vienna Conference and the Rule of Law Celebration would not have been such a success: **Dr. Heinz Fischer**, President of Austria; **Mag. Claudia Bandion-Ortner**, Minister of Justice of Austria; **Dr. Ivo Greiter** & the Law Firm of Greiter, Pegger, Kofler & Partner (Innsbruck, Austria); The Studio Legale Ghia (Milan & Rome, Italy); The Law Firm of Wolf Theiss (Vienna, Austria); **Mr. Manuel Alonso**, WJA Official Travel Agent and his staff onsite; **Gita Pancholy**; and the gracious staff of the Imperial Renaissance Hotel, the Vienna Tourism Bureau and the Mozart Concert Hall.