

the world jurist

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BUDAPEST / VIENNA CONFERENCE: One Step Closer to World Peace through the Rule of Law

Report of the Nineteenth Biennial Conference on the Law of the World

With a call to end the practice of inaction by the international legal community, the Nineteenth Biennial Conference on the Law of the World became a stage for discussing ways to strengthen the Rule of Law in all nations. The World Jurist Association's 1999 Conference was held in Budapest, Hungary and Vienna, Austria during October 3-10, 1999 under the theme "World Peace in the 21st Century: Strengthening the Rule of Law in all Nations."

The link between Hungary and Austria is an old one, so strong that even the barriers of the iron curtain could not destroy it. The delegates of this Conference witnessed the beauty and splendor of both historic capital cities, Budapest and Vienna, and enjoyed a week of panel sessions, plenary meetings and receptions that made a united call for world peace through the Rule of Law.

The Conference was an unqualified success and is certain to lead to 2 years of exciting and inspiring projects for the World Jurist Association and its members. Enclosed, readers will find the complete report of the Budapest and Vienna Conference. This report summarizes the substances of the discussions and describes the special events, which enhanced the delegates' experiences in both cities. Several speakers provided work papers to accompany their presentations and these are available through the World Jurist Association headquarters in Washington, DC.



Daniel J. Monaco, newly elected President of the World Jurist Association, addresses the Opening Session at the Hungarian Parliament in Budapest.

Participants from the following countries joined together for this year's Conference:

Argentina	Austria	Australia	Bangladesh
Belgium	Brazil	Canada	China
Côte d'Ivoire	France	Germany	Georgia
Haiti	Holy See	Hungary	India
Indonesia	Ireland	Israel	Italy
Japan	Korea	Macau	Malta
Mozambique	Nigeria	Norway	Philippines
Romania	South Africa	Spain	Sri Lanka
Sweden	Turkey	Ukraine	UAE
United Kingdom	United States	Venezuela	Yugoslavia
Zambia			

Sofia Seminar

Immediately preceding the Nineteenth Biennial Conference on the Law of the World, the World Jurist Association joined the Association of Young Lawyers of Bulgaria and hosted the Sofia Seminar. This seminar, held September 30 – October 2, 1999, focused on **Legal Instruments for Enhancing Transparency, Openness and Accountability of the Governments**. This seminar brought together more than 100 participants – leading local and foreign experts, judges, members of the Bulgarian Constitutional Court, the Supreme Administrative Court, the Supreme Court of Cassation and MPs – to share and discuss the developments and expectations for the emerging new democracies in Central and Eastern Europe. It was also a new and successful step in the cooperation between WJA and AYL.

List of Speakers:

Lucio Ghia, Past President, WJA, Italy
Prof. Zhivko Stalev, Chairman, Constitutional Court, Bulgaria
Mario Tagarinski, Minister of State Administration, Bulgaria;
Vladislav Slavov, Chairman, Supreme Administrative Court, President, Union of Bulgarian Jurists;
Dimitar Gochev, Member, Constitutional Court of Bulgaria;
Bill Collety, Director, Management Systems International;
Daniel J. Monaco, First Vice President, WJA, USA
Borislav Tsekov, President, AYL, Bulgaria;
Garry Hunter, Director of Law, Athens, Ohio, USA;
Zhivka Damianova, Expert, “Coalition 2000”, Centre for the Study of Democracy, Bulgaria;
Maria Strandzhanska, President, National Union of Jurisconsults of Bulgaria;
Prof. Emilia Drumeva, Head of the Legal Department of the National Assembly, Bulgaria;
Mark Meyer, Lawyer, Herzfeld & Rubin, USA; President, American-Romanian Chamber of Commerce;
Ivan Sirakov, USAID/Local Government Initiative, Bulgaria

Prof. Snezhana Nacheva, Faculty of Law, Sofia University, Bulgaria,
Dr. Nihal Jayawickrama, Executive Director of Transparency International, London Office, Sri Lanka
Dr. Boyan Durankev, University of World and National Economy, Bulgaria.

The morning session was chaired by **Borislav Tsekov**, President of the Association of Young Lawyers of Bulgaria, and **Garry Hunter**, Director of Law, Athens, Ohio, USA, and the afternoon session by **Mladen Danailov**, Vice President of the Union of Bulgarian Jurists, and **Dr. Nihal Jayawickrama**, Executive Director of Transparency International, London Office;

The Chairman of the Bulgarian Parliament, **Yordan Sokolov**, sent a

access to information have been commented upon. Representatives of leading Bulgarian NGOs presented their experience in monitoring the administration and combating corruption through transparency building.

After the conference, participants were invited to a reception given by the Union of Bulgarian Jurists.

All leading Bulgarian media covered the conference and the co-operation between WJA and AYL. (Visit the site of Bulgarian National TV to watch a video from the conference – <http://creator.bnt.bg/0110/em6.asf>).

Besides the conference, a number of meetings and courtesy calls were organized by AYL. On 30th of September **Mr. Monaco, Mr. Streeter and Mr. Borislav Tsekov** met the Deputy Chairman of the Bulgarian Parliament, **Prof. Alexander Dzherov**, who is a

prominent Bulgarian lawyer. They discussed legislative reforms in Bulgaria and the role of WJA in promoting international peace and justice. On October 1, all members of WJA Board who participated at the Sofia Seminar met with the Chairman of the Supreme Administrative Court, **Mr. Vladislav Slavov**, who is also President of the Union of Bulgarian Jurists. **Mr. Garry Hunter** met the local team of USAID/Local

Government Initiative, and **Mr. Monaco** ABA/CEELI key figures in Bulgaria.

All speeches and key moments of the discussion will be published in November in a special edition of “Law and Economy” Journal and also posted on the web page of AYL <http://law.cjb.net>.

For more information about this conference, please contact the WJA (e-mail: wja@wja-wptlc.org) or AYL (e-mail: ayl-bulgaria@usa.net).



Left to Right: Borislav Tsekov, Marcia Leonhardt, Garry E. Hunter, Judge Martin Evans, Mladen Danailov, Mark Meyer, Nihal Jayawickrama

welcoming address to the conference.

The foreign speakers, **Lucio Ghia, Daniel J. Monaco, Garry Hunter, Mark Meyer and Nihal Jayawickrama**, made an in-depth review of practices in different countries aimed at facilitating citizens’ participation in the decision-making process, access to information and focused on improving openness and accountability of governments.

Bulgarian officials and experts outlined the cornerstones of Bulgarian legislative reform to enhance transparency. The new laws on public procurement, on state administration, and civil service as well as the draft law on

World Law Day Celebration

ECUMENICAL SERVICE AND CELEBRATION

Keeping with a tradition that is now 34 years old, the World Jurist Association began the Nineteenth Biennial Conference on the Law of the World with an Ecumenical Service and the World Law Day Celebration on Sunday, October 3, at St. Stephen's Basilica in Budapest. **Card. Dr. László Paskai** (Hungary), Archbishop of Esztergom-Budapest, opened the historic Basilica, completed in 1906, to the participants of the Conference and the general public.

During the Ecumenical Service, distinguished representatives of the five major religions presented a brief look at the important and dynamic ways in which moral values and concepts are embodied in the principles of the Rule of Law. This service was open to the participants of the Conference as well as to the general public, and participants were called on to join in the worldwide celebration of World Law Day.

Mons. Ivan Jurkovich, (Holy See) Secretary of State, Secretariat of State of the Holy See, represented the Christian religion and read a message from **His Holiness Pope John Paul II** to the World Jurist Association. His Holiness encouraged the delegates "to pursue your efforts so that individuals and societies will never lack reliable and universal points of reference which will enable everyone to see that their rights are truly guaranteed and that they are sustained in the fulfillment of their duties. As a result, it will be possible in every area to see reasonable, just and impartial solutions to avoid conflicts or resolve them peacefully."

His Holiness also remarked on the importance and scope of the deliberations that would take place during the Conference. He noted, "In a world which, on the one hand, possesses an impressing juridical heritage but, on the other, is continually threatened by numerous violations of solemnly proclaimed rights, it is essential that jurists commit themselves to ensuring the supremacy of law and its institutions over injustice and self-interest."

Assuring the delegates that His Holiness the Pope was "spiritually close

to all those gathered," Mons. Jurkovich concluded his remarks with a few thoughts of his own and best wishes.

The Hon. Ram Jethmalani (India), Minister of Justice and Law of India, spoke on the Hindu belief's commitment to peace and non-violence. He first traced the origin of the Hindu religion, establishing it as one of the "oldest and humblest" faiths.

The earliest signs and records of this religion were found on the Indus River. According to Minister Jethmalani, originally known as *Indus*, the people came to be known as Hindus because the ancient Persians and Arabs who traded with them could not pronounce "I" and they thus pronounced it as "H". The Hindu religion is the oldest because its origin in the time dimension is lost in antiquity. Hindus do not follow a fixed scripture and have no fixed dogma. "You can be a Hindu who believes in a million gods, in one God or no God at all. Its fundamental faith is that whatever faith you sincerely adopt you will ultimately merge with the Infinite. Understandably we are, therefore, incapable of conflict, quarrel or confrontation with any other religion or faith."

Minister Jethmalani asked those present to recall their original purpose and draw closer to reaching the goal of "Pax Orbis Ex Jure" – World peace through the Rule of Law.

Dr. Nihal Jayawickrama (Sri Lanka), Executive Director of Transparency International – London Office, spoke on the contribution of Buddhism to the Rule of Law. He also looked to the origin of the religion, when, over twenty-five centuries ago, a young man by the name of Gautama Siddharta, barely 29 years of age, a sheltered prince in the Kingdom of the Sakyas, in that portion of the Indian sub-continent which is today known as Nepal, was suddenly confronted with the reality of life; that old age, sickness and death were the lot of all mankind. He left his palace, his young wife, and his newborn child, and became an ascetic, in search of a solution to human suffering, a way out of this universal suffering.

For six years, he meditated until one evening, at the age of 35, he attained

"enlightenment". From that moment, he was known as "the Buddha."

The Buddha expounded a philosophy of life based upon tolerance and compassion. Dr. Jayawickrama recalled a conversation between the Buddha and his disciple, Upali, on a question relating to the disciplining of a monk:

Q: Does an Order, Lord, that is complete carry out an act that should be carried out in the presence of an accused monk if he is absent? Lord, is that a legally valid act?

A: Whatever Order, Upali, that is complete carries out an act that should be carried out in the presence of an accused monk. If he is absent, it thus comes to be not a legally valid act, not a disciplinarily valid act, and thus the Order comes to be one that goes too far.

Q: Does an Order, Lord, that is complete carry out an act that should be carried out by the interrogation of an accused monk if there is no interrogation?

A: Whatever Order, Upali, that is complete carries out an act which should be carried out on the interrogation of an accused monk. If there is no interrogation, it thus comes to be not a legally valid act, not a disciplinarily valid act, and thus the Order comes to be one that goes too far.

Thus was enunciated, 2500 years ago, the rules of natural justice."

Dr. Jayawickrama gave several examples to demonstrate that in the philosophy expounded by the Buddha is found a recognition of several of those concepts which the civilized world now accepts as fundamental human rights, and the essential elements of good governance.

The President of SAARCLAW and Vice Chairman of the Bangladesh Bar Council, **Md. M. Amir-Ul Islam** (Bangladesh), spoke eloquently on the Islamic religion and its characteristics for promoting the Rule of Law. He began by tracing the cultural heritage of the muslim faith and the origins of fundamental rights.

Mr. Amir-Ul Islam described how the inherent quest for knowledge and the power of reasoning led Adam and Eve from blissful innocence to a world where God granted them the freedom of choice, human dignity and a host of rights and

responsibilities. "We are told in our scriptures that human beings are equal and the laws of God and of nature are just and reasonable which is not only our heritage from the Garden of Eden but are preached and taught by our Prophet."

Mr. Amir-UI Islam reminded the delegates that with the right to dissent, freedom of thoughts and conscience, God made human beings accountable to Him. Accordingly the Muslim faith states that the freedom of conscience and religion and respect for other's beliefs and culture is "a commitment we owe to the origin of mankind." He called for a renewing of faith in the human heritage and respect for other's culture, religion and ethnicity."

The Hon. Mayer Gabay, WJA National President for Israel and First Vice President, UN Administration Tribunal (Israel), explained Judaism's important contributions to the Rule of Law.

The Jewish religion is one in which law and rules play a primary role. The Head Rabbi of Hungary, **Dr. József Schweitzer** stated, in a message to the World Jurist Association, that "The commandments and laws laid down in the Bible and in later rabbinical literature are ascribed a special place in Jewish religion."

The Rabbi also explained that the role of religion in answering the questions plaguing today's society is a significant one. "We have to understand that crime, war and violence are not merely actions of the State. These are activities that are carried out by individuals. They are actors who live and work among us. Therefore it rests upon us, the private citizen, to create an environment that rejects violence, to demand and seek solutions through peaceful measures, and to teach our children and our leaders to adhere to the Rule of Law."

In conclusion, **Professor Ved Nanda**, President of the WJA, led the assembly in the Ecumenical Prayer. This prayer invokes the power and guidance of the Lord, however he is called, to enlighten the minds of those gathered, who seek to promote justice and peace through the Rule of Law.

RECEPTION

Immediately following this service and celebration, the delegates traveled by bus to the Hungarian Parliament Building. The sweeping grandeur of this building was a beautiful setting for the first in a series of elegant receptions hosted by the leaders of Hungary. This welcoming reception was hosted by **H. E. Dr. Ibolya David** (Hungary), Minister of Justice of the Republic of Hungary and Honorary Chairperson of the Local Host Committee of Hungary.

The Hon. Meir Shamgar (Israel), Chief Justice of the Supreme Court of Israel (ret.) delivered the keynote address for this year's celebration, in which he stated: "We have gathered in Budapest, on the eve of the new millennium, in order to try and confront again the tasks leading to the strengthening of the Rule of Law, to exchange views and ideas in this framework; to listen to the gamut of opinions on some of the important contemporary legal problems of our respective nations and societies; to seek ways to assist the individual, confounded by a complicated technological and technocratic world, with its ever-increasing demands on the freedoms of the individual and his human dignity; and in order to define goals for improvement and, if need be, change, to eliminate flaws and deficiencies in our systems of law.

"In doing all this, we are breaking the language barrier and transforming local and national problems into topics developed for solutions by multi-national forums. Such comparative effort is usually of stronger effect and more convincing in weight and persuasive power than decisions developed only within the framework of municipal law, without *a priori* comparative consideration and evaluation of alternative solutions created elsewhere.



"Today, after our sight-seeing tour, it would perhaps be appropriate to compare our wide and variegated way of analysis, inherent in the structure of our discussions

and demonstration trials, by way of association, to the Danube River flowing through this capital but passing on its way from one country to another, and wetting many shores. The same applies to our Association. The deliberations and solutions do not identify with one people only or merely with one culture, but run through many different countries, peoples, nations, cultures and languages.

"But we are not simply a melting-pot of ideas; we are a partnership composed of a variety of identities trying to learn from each other and working for better mutual understanding.

"As common and even traditional in our meetings, they are exemplary in their ambiance and a paradigm of friendship and cooperation.

"Let us hope that this spirit will continue to prevail and accompany us. We believe that this spirit should cross into wider fields of multi-national relations and turn into a general hallmark of the relations among nations. This will further our effort to foster and fashion the Rule of Law in the next millennium. If this next millennium proves in practice to serve as an open-minded, open-headed and tolerant host to our ideas, our message will be carried on, despite all vicissitudes of time and change. We shall be optimistic."

Minister David was among the first leaders of the Hungarian Government to extend her support for this important conference. Her belief in the work of international jurists and the World Jurist Association was clearly evident in her welcoming remarks during the reception. As the Honorary Chairperson of the Local Host Committee for the Budapest Conference, and a dedicated advocate of peace and development, Minister David warmly welcomed the participants of the Conference and recalled to them the importance of the work that lay ahead of all members of the legal profession.

Minister David and the Ministry of Justice hosted an elegant reception that set the tone and mood for the days spent in Budapest.

Opening Ceremony

Through the gracious cooperation of Speaker of the House, **Dr. Janos Ader** (Hungary), the Opening Ceremony of the Budapest Conference was held in the Sessions Hall of the Hungarian Parliament on Monday, October 4, 1999.

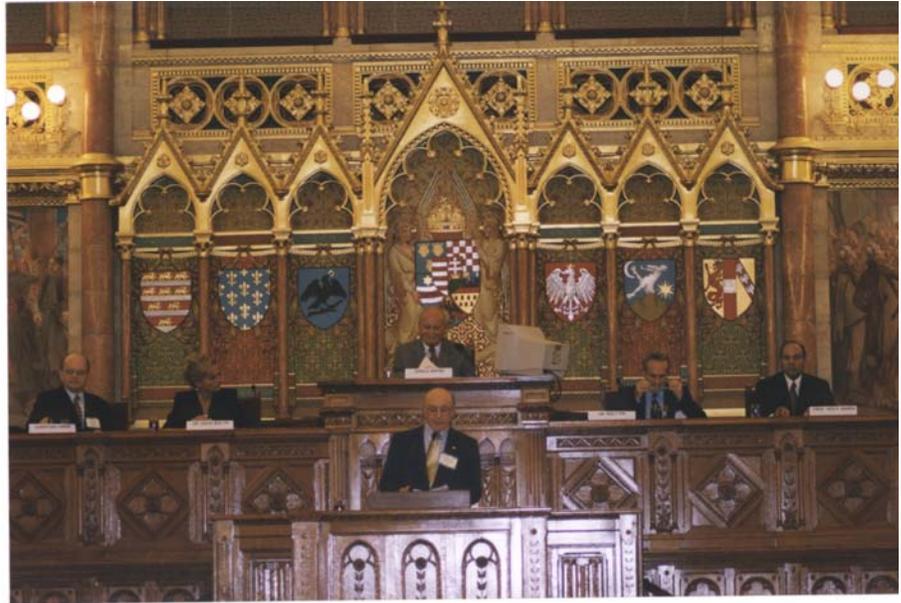
Presiding as Master of Ceremonies was **Mr. Daniel J. Monaco** (USA), First Vice President of the World Jurist Association. Mr. Monaco welcomed the distinguished speakers and the delegates to the Nineteenth Biennial Conference on the Law of the World. In his remarks, Mr. Monaco renewed the WJA's commitment to world peace through the Rule of Law and stated that the goal of this year's Conference would be to develop stronger tools to realize this commitment.

The President of Hungary, **H. E. Dr. Árpád Göncz**, opened the Nineteenth Biennial Conference on the Law of the World and addressed the gathering of several hundred WJA delegates. The President reflected on the relevance of the Conference's agenda and the events that have shaped the past and future of Hungary. Emphasizing that democracy is more than just politics, President Göncz stressed that democracy is a "mode of existence," one which he described as prevailing the entire way of life in a society.

As specific examples, the President highlighted the changes that have already swept through Hungary and the goals that still must be achieved. With regard to the expectations for the future, he spoke not only to the Hungarian citizens, but also to citizens of all nations:

"Society, meanwhile, has not fully understood that when it looks to the State for effective and successful intervention on account of the breakdown of law and order, banks going bankrupt, unemployment, consumer defrauding or other issues that are making people's lives more difficult, in effect it longs for a return to a more centralized State under much stricter control and, with it, for the narrowing down of the freedom of society.

"Yet it is society, and in it the individual, that can really overcome the difficulties. It is the civil society, and in it the individual, that can really ensure democracy for themselves."



President Göncz asked for the help of the international community in Hungary's efforts to become a part of the community of Europe and he wished much success for the Conference.

The President of the Hungarian Supreme Court, Chairman of the Hungarian National Council of Justice and Chairperson of the Local Host Committee, **H.E. Dr. Pal Solt**, explained that there are conditions to the ability of the rule of law in Hungary to support the development of social equality and justice. He said that the ability of the law to be reformed to reflect new changes in Hungarian society is important to achieve this end. He stated that the Hungarian system of justice is moving forward, especially in the area of international criminal law, and furthermore in recent years a decisive reform process has been initiated in the Hungarian justice system. One of the important results of the reforms was the creation of the National Council of Justice, with responsibility and broad competencies for administration of the courts.

Dr. Solt hailed the Nineteenth Biennial Conference as a significant event not just because of the commemoration of the Tenth Anniversary of the Fall of the Berlin Wall, but also because it would be the first held in a former communist country and the last in this millennium. And also because the 1000th anniversary of the creation of the Hungarian State will be celebrated next year, the World Law

Conference, serving the equality, integration and peace of nations will also introduce a whole range of national celebrations in a very dignified way.

The Hungarian Minister of Justice, and Honorary Chairperson of the Local Host Committee, **H.E. Dr. Ibolya David**, began her intervention by describing how Hungary had been cut off from the rest of the world for 40 years. She stated that the Iron Curtain was more than a symbol; it was "a physical, painful, and shameful edifice" that separated countries with a common history. She explained that 40 years of separation could not change over one thousand years of Hungarian history, and that Hungary is in the process of "restoring" its society. She emphasized that this restoration will take a long time and much effort on the part of the Hungarian people, and that jurists have an important role to play in restoring the democratic system in Hungary.

The Minister of Justice provided personal thoughts on how Hungary's work is linked to the world jurist community.

"The law now helps us to become more international in our daily lives. Hungarian jurists are now interested in transnational legal issues such as the development of modern technologies the moral dilemmas that may be associated with these developments. The very important changes that are occurring in Hungarian society coincide with the revolutionary changes that are taking place in the outside world. The Rule of

Law is becoming international and the training of jurists in Hungary is being modified to reflect these changes. We are now seeking a balance between the application of international law and national law.”

Mr. Christian Lange (Germany) of the European Union Parliament spoke about the development of EU law from a parliamentary perspective (not a governmental perspective). He stated that the survival of any political system depends on what its citizens think of it. Law cements a society together.

He described the U.S. system and how it is based on the rule that free men could be ruled by a constitutional system under which the law would predominate. He said that this system is similar to the EU system in that the law is at the base of the foundation of the EU as found in the EU treaties.

Treaties play a role, but the European Court's application of treaty provisions plays an even more important role. Mr. Lange stressed the importance of EU member states abiding by the EU directives.

The principles of democracy and the rule of law shall continue to provide the basis for the development of European Union law.

The President of the World Jurist Association, **Prof. Ved Nanda** (USA), then took the podium. He described Charles S. Rhyne's vision of creating a world based on the rule of law and global peace. He warned that we have a long road ahead, but that every step counts.

Prof. Nanda spoke about the seminars that the WJA has organized around the world, including in India, in Kiev, and elsewhere.

He stated that the international community must "pull together" in order to stop the abuse of Human Rights. He noted how in many instances, the United Nations has done very little in this regard. For example, in Kosovo, there was no prior Security Council resolution before NATO intervened. "Our challenge is to correct these problems so that the rule of law will govern the international community. The stakes are high, but we will work to make global peace a reality in the years to come."

HUMAN RIGHTS PANEL

October 4, 1999, Budapest, Hungary

The Human Rights Panel Session under the Chairmanship of **Dr. Nihal Jayawickrama** (Sri Lanka), had five speakers addressing perhaps two hundred WJA participants in a packed room in the Hall of the National Council of Hungary.

The speakers tackled a broad range of issues, ranging from human rights in the Indonesian criminal justice system to humanitarian intervention in conflicts, and the role of corruption in weakening a state's ability to fully implement human rights.

Dr. Jayawickrama, Executive Director of Transparency International – London Office, and the session's chair, opened the panel with remarks on the 50th anniversary of the adoption of the Universal Declaration of Human Rights. He drew a picture of the rather amazing advances of international human rights, but also some of the unfulfilled expectations as we enter a new millennium.

Dr. Jayawickrama pointed out that ethnic groups caught up in states through the creation of artificial borders have no mechanism for the peaceful consideration of their aspirations, as Kosovo has dramatically shown. He eloquently outlined the need for some form of Commission or international institution to deal with the application of self-determination claims, some sort of mechanism to address the demands of ethnic groups lest they have to resort to violence to advance their claims.

Dr. Jayawickrama then gave the floor to **Professor Ved Nanda** (USA), President of the WJA, who made an impassioned plea for the Rule of International law over narrow national interests.

He launched his presentation by asking participants: When is the use of force appropriate to protect human rights?

Professor Nanda briefly outlined the provisions of the United Nations Charter and decisions such as the International Court of Justice's Nicaragua Case, which confirm the Charter's predominant role in this area.

Pointing out how most of today's conflicts are intrastate and that it is unacceptable that international organizations be prevented from intervening in horrendous situations such

as Rwanda's genocidal events, Professor Nanda indicated that national sovereignty is no longer a barrier to intervention.

While he agreed that humanitarian intervention can be seen as a moral imperative, the NATO precedent in Kosovo seemed hardly to be based on such an imperative since NATO was not willing to risk a single soldier on the ground.

If international law follows the path of a "right of humanitarian intervention" then it must be based on necessity, proportionality and the human law impact of any action. It must not be ad hoc operations left to the whims of superpowers to use or abuse as they please.

Professor Nanda also called for a strengthening of the United Nations and increasing of its capabilities to deal with some of the smaller conflicts. He suggested that the United Nations should have a small standing military force in order to do so. He added that the UN is perhaps the only institution that can ensure the protection of human rights based on universal rules and principles. Professor Nanda also added that it is essential that States pay their dues – so that the U.N may effectively play its role.

Mr. Dennis Shepherd's (USA) presentation followed Professor Nanda, and like him, he examined NATO's intervention in Kosovo. Mr. Shepherd, a lawyer, presented his paper, "My Country, Right or Wrong", which examined what happened to international law in NATO's intervention.

After describing the events leading up to the attacks on Kosovo, Mr. Shepherd then proceeded to focus on the legal dimensions of the intervention, especially UN Charter obligations, but also NATO treaty provisions and some customary law.

Pointing out that "the UN charter is the law", Mr. Shepherd suggested that the law represents one of the best hopes of preventing ethnic cleansing.

He then proceeded to enumerate a series of UN Charter provisions which he viewed as having been violated: the peaceful settlement of dispute obligations, Security Council approval to use force, etc.

Mr. Shepherd also signaled NATO treaty provisions which state that NATO shall obey its obligations under the UN Charter. He finally referred to the

difficulty of applying the law of warfare in a conflict which only had one combatant, NATO.

The following speaker, **Dr. Fernand de Varennes** (Australia), Professor at Murdoch University and Director of the Asia-Pacific Center for Human Rights and the Prevention of Ethnic Conflict, dealt with the issue of using international law to prevent ethnic conflicts before they develop into full-fledged violence. Dr. de Varennes also served as rapporteur for this panel.

According to Dr. de Varennes, most ethnic conflicts emerge when a fairly large ethnic group finds itself seriously disadvantaged or excluded from access to employment, education or other benefits by government policies and laws. It is often because of the violation of basic international human rights, and especially non-discrimination, that certain minorities revert to violence.

For minorities, Dr. de Varennes pointed out, violence is a last resort, since by definition minorities are outnumbered, and the force of the might and resources of the State are often controlled by the ethnic majority.

Dr. de Varennes also argued that democratic states are not ethnically neutral, since directly or indirectly, the ethnic majority's language, religion and culture tend to be favored in various law and policies. Rule of the majority tends to be rule by ethnic majority almost everywhere.

Dr. de Varennes then proceeded to demonstrate how violations of human rights relevant to the areas of language, religion or culture could contribute and eventually lead to an environment of explosive ethnic tension. He showed how in Sri Lanka, the policies and laws of a democratically elected government involved discrimination based on language; and how the Tamil minority were increasingly disadvantaged in terms of access to jobs and education. This finally led to the use of armed and secessionist movements because of the inability of the minority to change the government's discriminatory policies. He ended by stating that world peace can only be achieved if ethnic conflicts are prevented, and if some of the root causes are addressed by applying the international human rights of minorities, particularly those affecting matters of language, religion and culture.

Mr. R.M. Surachman (Indonesia), APU Research Professor Eqv., followed with a presentation of the human rights aspects of the criminal justice system administration in Indonesia. He pointed out the presence of human rights provisions in Indonesia's constitution and Basic Laws. For example, he referred to the country's original 1950 constitution which embodied many fundamental rights laid down in the Universal Declaration of Human Rights. Mr. Surachman nevertheless acknowledged that there were gaps in Indonesia between the theory of these human rights and the actual practice.

A number of human rights and procedural guarantees in criminal matters are covered in various laws and the criminal code for the absence of precise constitutional provisions in Indonesia's present constitution. Mr. Surachman enumerated a number of these, including the prohibition of discrimination in court cases, the need for a warrant for arrest, detention, search and seizure, the right to legal counsel, etc.

Among positive developments in Indonesia, Mr. Surachman mentioned the proposal to establish a new court of human rights.

The final panelist, **Mrs. Dolores Español**, an attorney from the Philippines, presented a thought provoking "cri de cœur" on corruption, the "Silent Killer"

Mrs. Español emphasized the link between corruption and human rights: "repressive and corrupt governments always resort to violation of human rights as a means of silencing dissent to gain economic prominence and political supremacy. Corruption breeds human rights violations, resulting in the deprivation of human dignity and widespread poverty."

Mrs. Español indicated that the cumulative effects of corruption are unabated poverty, hunger, neglected health care, lack of appropriate shelter, unsanitary water and surroundings, illiteracy and the absence of decent livelihood opportunities.

She also pointed out that corrupt administrations tend to spend less on education and social expenditures, indicating, in her view, that corruption tends to mortgage future generations.

Mrs. Español then proceeded to explain to the panel's participants the

mission and activities of Transparency International, a movement aimed at the prevention of corruption with some seventy national chapters worldwide.

She concluded her presentation with an impassioned plea to strengthen efforts in the fight against corruption, since corruption is a major cause of human rights violations.

Time constraints and even difficulties with the meeting room's sound system did not hamper the participants' interest in these issues. Because of lack of time, the Chairman had to cut short the number of questions that could be taken from participants.

Future consideration may have to be given to tackle these problems in future meetings so as to encourage and facilitate wider participation.

In terms of the substance of the panel discussions, participants reacted strongly to two main topics raised by the speakers: (1) the need to strengthen legal steps to fight corruption especially in the judicial system, and (2) the necessity to apply the international Rule of Law in conflict situations such as in Kosovo. Many participants decried the ad hoc notion of the NATO intervention and emphasized the need to apply uniform and universal principles. There were strong arguments for an effective United Nations, equipped with some form of armed capability to address smaller conflicts as well as for international law to move towards clarifying the rules relating to humanitarian intervention in intra-state conflicts.

Participants did not actually vote on any precise recommendations, probably due to time constraints did not permit participants to engage in such a process and because the session's format was not conducive to that kind of exercise.

However, from the reactions, comments and enthusiasm of participants, there would appear to be a desire for some continued and perhaps more proactive action of the World Jurist Association in the following areas:

1. Strengthening legal systems against the corrosive effects of corruption,
2. Strengthening International Law and Institutions that work to prevent conflicts, especially intra-state conflicts, including the development of the legal concept of humanitarian intervention, mechanisms for the

prevention of conflicts involving minorities.

There were no clear indications as to what activities the WJA should undertake within these areas, though it seemed there was underlying hope that the WJA Executive would take the initiative to expand on these ideas.

Some participants after the session informally suggested that the WJA could

- Set up groups of experts to prepare draft declarations on the prevention of intra-state conflicts and humanitarian intervention for adoption at the next biennial conference,
- Approach other organizations involved in issues of corruption in order to work on joint projects in the future.

A recommendation based on these suggestions has been forwarded to the WJA Biennial Organization.

LAW AND TECHNOLOGY PANEL

October 4, 1999, Budapest, Hungary

Concurrent with the Human Rights Panel Session, described above, the Law and Technology panel was the first working session of Conference. **Dr. Franklin Hoet Linares** (Venezuela), Past President of the World Jurist Association and partner in the law firm of Hoet Pelaez Castillo & Duque, chaired this two hour session and served as rapporteur.

Dr. Pablo Horvath (Argentina), a lawyer and consultant, began the session with an insightful discussion on the biotechnology industry and the patent protection system, with particular examples from Argentina. Dr. Horvath warned that without effective patent protection no biotechnology company can absorb the costs associated with new products nor can such companies continue to fund research into and development of additional new products. He made particular reference to the need for patent protection for micor-organisms, isolated or otherwise separated from the natural surroundings.

Dr. Mayer Gabay (Israel), World Jurist Association National President for Israel, and First Vice President of the United Nations Administrative Tribunal provided an introduction to intellectual property and world trade, and discussed not only their significance as a legal issue,

but also the major economic chapter known as TRIPS (Trade Related Intellectual Property Rights), which led to the creation of the World Trade Organization. Dr. Gabay explained that if a country does not comply with its obligations under an international convention covering intellectual property, of which there are now 22 conventions, it can be brought to the dispute resolution system of the WTO, and sanctions can be imposed, not only in the area of intellectual property, but also in trade matters.

Dr. Michael Frendo (Malta), World Jurist Association National President for Malta and Managing Partner in the law firm of Gatt Frendo Tufigno Adv., presented an introduction to the world of electronic commerce and the legal aspects related to it. He explained that individuals and governments have a strong interest in E-Commerce. Dr. Frendo cautioned that the benefits can only be realized if the system is set up and functions within a regulated environment to protect the vulnerable. A system of certainty of law, effective remedies, and relief are critical if E-Commerce is to make a positive contribution to global commerce.

Providing yet another angle to the dynamic discussion of law and technology, **Dr. Franklin Hoet Linares** concluded the panel with a look at the Y2K problem and the venezuelan legal framework. The main problem, according to Dr. Hoet, is that which no one can predict accurately what will acutally happen on January 1, 2000, there is a clear consensus that the "Y2K Bug" will have global consequences and could potentially disrupt commercial operations worldwide. His paper presented a brief survey of the current Venezuelan legislation as it relates to the Y2K problem, specifically the practical implication of the legislation for the purposes of the Y2K mitigation. The conclusion reveals that in Venezuela, like in other civil law countries, there exists an alarming lack of understanding by the regulatory agencies of the unique nature of the year 2000 problem: That of Interconnection. The Venezuelan legal regime, based on mainland Europe's civil law tradition, does not possess flexible mechanisms that would allow it to adapt to what is essentially a unique event in history, a simualteous and wide-spread flood of operational failures.

AGING AND THE LAW PANEL

October 4, 1999, Budapest, Hungary

The Nineteenth Biennial Conference on the Law of the World became the first WJA event to focus particularly on the issues arising under the changing demographics sweeping the global population. The Aging and the Law Panel, inspired by the efforts of the United Nations during the Year of the Older Persons and organized through **Ms. Angela Heath** (USA) introduced delegates to the issues facing the legal community as the number of elder persons continues to rise around the world.

Mr. Paul Tobias (USA), chaired this distinguished panel of experts. Mr. Tobias is the Chairman of the National Employee Rights Institute in the United States and a well-respected advocate for employment rights of the elderly. The first speaker was **Prof. Dr. Ernst Otto Wolfshohl** (Germany), a Professor of Psychology and adviser to the Graue Panther Stiftung in Germany. As the only non-legal professional on this panel, Prof. Dr. Wolfshohl provided a unique description of the types of problems which can occur when legislatures and courts began to address the issues of Elder Care. Using Germany as a case study, he demonstrated the delicate balance between protection and assistance of elder persons and the devastating invasions of privacy and obstruction of rights that often results.

Germany has passed a number of laws that are intended to protect the elderly. However, Prof. Dr. Wolfshohl was concerned that these laws were overprotective and compromised the autonomy and dignity of the elderly. For example, older people were institutionalized using guardianship laws when they would have preferred remaining in their own homes even though this increased their risk of injury due to falls, kitchen fires, etc. Thus, he prefers home care assistance to the use of guardianship laws. His organization, Grey Panthers, was formed to strike a balance between protection and autonomy of older people using over 700 lawyers.

Prof. Dr. Wolfshohl concluded by asking the delegates to consider the question: How can we creat a system to

protect the elderly without hindering their rights?

Keeping this question in mind, the next speaker spoke specifically on the economic survival of Elder Persons. **Dr. Pablo Horvath** (Argentina), a lawyer and consultant, provided a broad picture of the issues currently under debate in the Latin American countries. He recognized that differences do exist, country to country, however in general there are two areas that all these nations seem to share – 1. Physical safety of the elderly, and 2. Economic security.

Previous leaders had been liberal with pensions, so that the number of pensioners greatly exceeded the money available. Thus, pensions were very low and no money was available to increase them. Countries have had some success with privatizing social security (Argentina, Peru, El Salvador, and Uruguay).

A lack of law enforcement has resulted in an increased number of street crimes against the elderly. He believes Latin American countries need stricter law enforcement and greater penalties for criminals. Dr. Horvath urged the legal profession to begin to address these issues now, in individual nations and around the world.

Building on the discussion of pension plans, **Mr. Paul Tobias** (USA) described the Age Discrimination Act and various other laws in the United States, which are designed to protect the economic livelihood of older workers. By providing a careful and detailed picture of the process under which an employee can file a discrimination claim, Mr. Tobias described the ways in which large corporations and other employers are able to circumvent the goals of these laws and regulations.

One million elderly are terminated from their jobs each year in the U.S. Unlike Europe, there is no protection from lay-offs or a system of seniority that is used in determining who keeps their jobs. He explained the coverage of Age Discrimination in Employment Act (ADEA) and how it is enforced, primarily by using private attorneys to bring lawsuits. Courts have made it increasingly difficult to prove age discrimination and judges prevent cases from being decided by juries if there is

insufficient evidence. If juries are allowed to decide, they tend to favor the employee and often make large monetary awards to the employee. However, most cases are settled in an amount equal to 3 - 12 months of salary. There is a trend toward using mediators and arbitrators to resolve these matters. Lawsuits with large monetary awards serve as a deterrent to age discrimination.

The first three presentations set an ideal stage for **Mr. Wayne Moore** (USA) Director of Legal Advocacy for the Association of American Retired Persons and rapporteur for this panel. Mr. Moore stressed that the future will call for a system of legal services that will specifically meet the needs of elder persons. He began by providing some alarming statistics: He reported that the proportion of the world's population that is 60 and older is increasing. It is 10% now and will be 22% in fifty years. These figures are even higher for developed countries (i.e., 19% and 33%).

Mr. Moore discussed how elder law became a specialty in the U.S. Basically it was due to: (1) the increase in new laws to protecting the elderly; (2) the dramatic increase in older people; and (3) the similarly dramatic increase in the number of lawyers. However, he discussed the fact that many older people in the U.S. (like people of all ages) are reluctant to use lawyers. Recent evidence suggests that this is because they don't have confidence or trust in lawyers. Previously it was believed that people didn't use lawyers because of high cost or the inability to find the right lawyer for the job. However, the vast majority of middle income people are able to obtain legal assistance when they want it.

To encourage greater use of lawyers, Mr. Moore suggested that lawyers partner with organizations or other professionals that people trust. If trust in lawyers can't be enhanced, then clients should at least be given greater control over their relationships with lawyers to off-set the low trust. This means changing the common method for delivering legal service, (i.e., full service and hourly billing). Methods should be used such as flat fees, up-front estimates of total cost, having the client handle portions of the representation (called "unbundling"), and

client-friendly ways of resolving disputes between lawyers and clients.

Mr. Moore went on to describe the solutions that organizations, such as AARP, are working on in order to address these particular needs. This model is one which can apply, with some adjustment, in many other nations that will also face these problems of how to provide legal services to this unique population.

The audience present demonstrated a real interest in the issues being discussed. Questions included: (1) whether mandatory retirement had been outlawed in the U.S. (it has with a few exceptions); (2) whether long-term care insurance was a good product (generally yes; best time to purchase is in late 50's); (3) what are the most common problems of elderly in U.S. (wills and estates, real property/housing, health care, consumer). One person observed that the hallmark of a democracy was thought to be the way they positively treated their elderly. The job insecurity of the elderly in the U.S. seemed to contradict this notion.

LEGAL EDUCATION PANEL

October 4, 1999, Budapest, Hungary

The Legal Education panel, in conjunction with a very active audience, discussed the importance of programs aimed at training public prosecutors in particular and lawyers in general. The panel also considered newly arising problems related to computer generated legal forms. **Mr. Dennis Shepherd** (USA) chaired this session.

The first speaker, **Professor Ved Nanda** explained how legal educators must work to bring analytical skills to students in addition to doctrinal elements. The focus should not be on litigation, as it has been in the past. More efforts need to be made concerning the prevention of litigation, including ADR and conciliation techniques.

Dean Cynthia del Castillos from the Philippines explained the new compulsory Continuing Legal Education (CLE) program which seeks to promote the concept known as the "ethical lawyer".

Mr. M. Amir-Ul Islam (Bangladesh) Vice Chairman of the Bangladesh Bar Council and President of SAARCLAW, offered an experience from his country in which legal trainers are themselves trained and where the training program itself is interdisciplinary in nature.

Finally, **Mr. Jan S. Marinka** (Indonesia), a public prosecutor, focused on the crucial need in Legal Education for more emphasis on ADR techniques to prevent the crisis or conflict before it finds its way to court.

EMBASSY NIGHT

October 4, 1999, Budapest, Hungary

Several of the foreign embassies in Budapest hosted receptions for their delegates during Embassy Night on Monday, October 4, 1999. The support received from the Ambassadors and their staff contributed to the international and cooperative focus of this Conference.

LOCAL GOVERNMENTS PLENARY

October 5, 1999, Budapest, Hungary

The Local Governments Panel was entitled "Creating Functional Local Government Democracies" and consisted mainly of local government lawyers who discussed various legal issues pertinent to local government in the United States and the Philippines. **Patricia Lynch** (USA), the elected City Attorney of Reno, Nevada, and President of the International Municipal Lawyers Association (IMLA) introduced the panel. **Henry Underhill**, the Executive Director of IMLA, was unable to join the panel, and Ms. Lynch filled in as Chairperson for Mr. Underhill. Ms. Lynch began with an overview of IMLA, which is a nonprofit professional association committed to promoting, supporting and strengthening local government law through communication, education, information and research. IMLA is the oldest organization in the United States and Canada devoted to serving the needs of local government lawyers, and its long time General Counsel and Executive Director was **Mr. Charles S. Rhyne** (USA), who is also the founder of the World Jurist Association. IMLA is made up of over 1500 city and country attorneys; state leagues; as well as an associate membership of private

practitioners, judge, law educators, and other organizations interested in furthering the development of sound local government principles.

The IMLA International Committee,



which is chaired by **Iris Jones**, of Austin, Texas, USA, is working to find creative ways to assist in the development of local government law and good government practices throughout the world. Its long-term goal is to create a world-wide network of local government lawyers and other interested parties in order to facilitate the evolution and advancement of the world's local governments through law. To this end it is the Committee's hope that by leveraging the skills and experiences of individual attorneys through global forums such as this Conference, functional local government democracies can be created and the elements of a civil society can be fashioned at the grass roots level in each specific country.

Steve Wolf, the elected City Attorney of Mt. Healthy, Ohio, USA and the President of American Legal Publishing, discussed prerequisites to establish the Rule of Law in local government democracies such as maintaining public records and ensuring that meetings are open to the public. **Rick Baltzersen** (USA), the only non-lawyer on the panel, who is the Project Director of New Business Development for American Legal Publishing, discussed the use of technology to increase openness and functionality in local government. **Garry Hunter** (USA), the elected Director of Law of Athens, Ohio and a member of the Board of Directors of IMLA, discussed the reasons for local self-government and legal structural forms of local self-government.

Dan Curtin (USA), a partner in the law firm of McCuthchen, Doyle, Brown, and Enersen, a San Francisco headquartered law firm and a former City Attorney of Walnut Creek, California, discussed the regulation of the development of property through the adoption and implementation of appropriate land use regulations such as planning controls, environmental controls, and permit controls. Mr. Curtin has also been active in the American Bar

Association and its Central and Eastern European Law Initiative (CEELI). He put his discussion in perspective by recalling a conversation following a speech Mr. Curtin delivered in Albania, while working for CEELI. The speech focused on land use regulation and the Mayor informed Mr. Curtin that while the speech was very interesting, what the village really needed was a truck. They needed a truck to get their milk to the next village to turn it into butter and cream. After that, they needed to be able to appoint their own police chief and judge, and only then they felt they could look at land use controls.

Iris Jones, the City Attorney of Prairie View, Texas, USA and Second Vice President of IMLA, discussed the provision of basic services by local governments while **Raul Corro**, City Councilor from Muntlupa City, Philippines discussed the provision of basic services at the local government level in the Philippines. Finally, Ms. Lynch discussed the role of volunteers in the provision of services and the decision making functions of local governments in the United States.

ALTERNATIVE DISPUTE RESOLUTIONS PANEL

October 5, 1999, Budapest, Hungary

Mr. Ronald M. Greenberg (USA), of Rosenfeld, Meyer, and Susman Law Office chaired this session. **Justice Deon Van Zyl**, (South Africa) WJA President

for Africa provided the report for this panel.

Professor Sang-Hyun Song (Korea), Seoul National University, described the characteristics of alternative dispute resolution in Korea with reference to arbitration, conciliation and mediation. He evaluated the arbitration system as an alternative to adjudicative proceedings. The former should be informed, expeditious and, as far as possible, devoid of technicalities. Confidentiality and flexibility should also characterize it. This makes it an attractive procedure for long term international commercial contracts, provided the relevant arbitration clauses are properly drafted. Less attractive is the finality of the arbitration, which excludes appeals, and the fact that the arbitrator may not be properly qualified in the relevant law.

In conciliation proceedings an impartial third party attempts to bring the parties together for purposes of negotiating a settlement. To a large extent the conciliation committee, comprising a judge and two or more other members, acts as a facilitator or mediator. Judicial involvement has been confirmed by the *Civil Conciliation Act* of 1990, which is prominent in family disputes heard by the Family Court.

Conciliation is not far removed from mediation which is described as a process directed at enabling the parties to resolve their disputes by agreement. A neutral third party will usually attempt to encourage an expeditious settlement on the terms decided by the parties themselves. Mediation mechanisms include negotiation, independent expert appraisal and guidance or facilitation.

Justice M. Mohammed (Nigeria), a justice on the Court of Appeal, highlighted the existing alternative dispute resolution proceedings as practiced in Nigeria. He described it as “an encapsulation of the policy of encouraging peaceful settlement of citizens’ disputes and the early settlement of pending litigation”. Of great importance is the recognition by the Supreme Court of Nigeria of the African customary modes of settling disputes by way of compromise and acceptance by the parties. This is a traditional system which operates at grass roots level with disputes being resolved by elders of the families or communities involved. A right of appeal lies to chiefs or sub-chiefs.

Statutory provisions also play a significant role, particularly in the field of commercial disputes, where the *Arbitration and Conciliation Act* of 1990 provides a unified legal framework for the resolution of such disputes.

Arbitration is seen as a procedure for the private settlement of disputes by a person or persons appointed by the parties. It is, in general, an expeditious, flexible and informal procedure.

Less formal still are conciliation proceedings which are directed at peaceful settlement of disputes out of court. Reconciliation and amicable settlement are strongly encouraged. This is particularly so in the case of matrimonial disputes which are regulated by the *Matrimonial Causes Act* of 1990. Despite this encouragement, however, alternative dispute resolution is not sufficiently used, a matter which will require proper consideration in the future.

Avv. Lucio Ghia (Italy), Past



President of the WJA and a lawyer, spoke in his paper of the effect of modern technology on alternative dispute resolution. The globalization of the market place made expeditious low cost solution of disputes essential. He referred to the backlog of cases in Italian courts as indicative of the slowness and lack of effectiveness of the system. Arbitration councils and the activities of Justices of the Peace had assisted in relieving the situation. It was necessary, however, to encourage mediation and conciliation as alternative modes of dispute resolution in order to restore the equilibrium.

Dr Franklin Hoet Linares (Venezuela) Past President of the WJA and a lawyer, pointed out that the desire to mediate or conciliate disputes was something which started at home, in the family circle, or at the office, among partners, employers and employees. It was largely a question of applied psychological method, in which very few lawyers were properly qualified. The purpose of mediation which, unlike arbitration, is not regulated by law, was to

make both parties winners. In addition, like arbitration, it was a method of achieving better, faster, cheaper and more effective justice. The legal profession, however, required the services of trade unions and specialized commercial, professional or judicial institutions. It was essential, however, to introduce legal education in this field in order to teach lawyers how to negotiate rather than fight.

Judge Deon Van Zyl (South Africa), WJA President for Africa and a justice on the Supreme Court, gave an overview of alternative dispute resolution in South Africa with reference to the substantial contribution of the South African Law Commission in the spheres of international and domestic arbitration on the one hand, and community dispute resolution structures on the other. The increasing use of alternative dispute resolution in civil and commercial practice, labor law, insurance and family law in South Africa was discussed as an indication of the need for arbitration, mediation and conciliation, as opposed to litigation and the formal adjudication of legal disputes. Even in criminal law, in the relationship between victim and offender, it had a role to play. As elsewhere in Africa, indigenous or customary law could not be lost from sight in this regard. In general alternative dispute resolution was making good headway in South Africa.

Finally **Mr Ronald M. Greenberg** drew a comparison, in his paper, between adjudication and arbitration of civil disputes in the United States of America. Each system had unique benefits and drawbacks relating to matters such as procedure, evidence and rights of appeal. In this regard reference was made to the scope of judicial review of an arbitration award, depending on whether the award was made in or outside of the United States of America. There are different opinions, however, on the issue whether or not the parties can provide for extended judicial review of international arbitration awards. In this regard he raised a word of warning to disputants seeking to confirm or vacate such an award: it is important to understand not only the law of the place where the award was rendered, but also the law of every other place where confirmation could be sought.

The papers elicited interesting discussion. **Judge A. M. M. Yola** of Nigeria observed that Islamic law played

an important role in the field of reconciliation. **Adv. I. A. Ben-Portal**, an attorney from Tel-Aviv, Israel, stressed the role played by Justices of the Peace in effecting compromises in lower courts, while the Supreme Court of Israel has confirmed the inherent right of all judges to do so.

CONSTITUTIONAL LAW PANEL

October 5, 1999, Budapest, Hungary

The Honorable **Justice Serafin V.C. Guingona** from the Philippines began this panel with a glowing presentation of the **Honorable Hillario G. Davide, Jr.** Chief Justice of the Supreme Court of the Philippines and Honorary President of the World Jurist Association.

Justice Davide, the keynote speaker, begin his remarks by stating that presently there are great global challenges to protecting national constitutions. The supremacy of international law does not automatically apply to municipal acts.

Justice Davide emphasized that the primary job of the judiciary should be to support the rule of law.

Justice Davide then entered into the specifics of his presentation, discussing the *jus cogens* rule and its application in international law - the mandatory norm of general international law from which no two or more nations may exempt themselves or release one another.

He stated that temporary arrangements, such as weak peace agreements, do not lend support to peace in the world. He emphasized that only permanent constitutional provisions can provide the support for development of world peace.

Justice Davide then presented his assertion that a world constitution could be the basis for uniform treaties and eventually, the creation of uniform municipal laws. He stated that a universal code of state conduct should be realized and that the strict observance of *Jus Cogens* is an important proponent of world law.

The next speaker, **Senator Bernardo Cabral**, WJA National President for Brazil and an elected member of the Federal Senate in Brazil, addressed the topic of "international law binding states against their will: may states continue to opt out of near-universal treaty regimes that embody preemptory norms?"

Providing examples from Brazil, Argentina and the European Union, Senator Cabral examined the role of treaties and international in relation to internal laws. His paper provided a detailed and thorough discussion on the concepts of *jus cogens* and *lex ferenda*, concluding:

"[I]n the so-called preemptory treaties there is clearly state consent, be it in the tacit form by which the State obeys peacefully to the statute of the use, be it in the express for of celebrating and signing the treaty, even when there is not ratification or incorporation to the domestic judicial system.

"In all cases, in the present stage of development of international law despite some dissonant voices, there is an increasing conviction as to the legality of the responsibility of States for the violation of treaties"

ENVIRONMENTAL LAW PANEL

October 5, 1999, Budapest, Hungary

The Environmental Law Panel was chaired by **Professor Joseph Dellapenna** (USA) of Villanova University. Professor Dellapenna was joined by **Mr. Richard Briggs** (UAE), a partner in the law firm of Al-Tamini and Associates; **Professor Hong-Sik Cho** (Korea), from Seoul National University; **Mr. R. M. Surachman** (Indonesia), APU (Research Professor Eqv.); and **Professor Janos Bruhacs** (Hungary), of the Janus Pannonius University.

With such a distinguished and diverse panel, a broad perspective on the developments in Environmental Law in various countries was eloquently presented. For example the Professor Cho of Korea described how "a number of severe environmental harms forced the Korean People to reevaluate their 'faster and faster' motto" which came on the heels of the industrial expansion in the country. He and many of the other panelists recommended that developing countries combine their efforts toward industrial progress with a serious thought to environmental protection.

By looking at the specific examples in Korea, Indonesia and the Middle East Professor Cho, Mr. Surachman and Mr. Briggs each provided a look at the legal developments in Environmental Protection in their home countries.

Additionally Professors Dellapenna and Bruhacs presented the case study of the Danube River case – an on going debate between Hungary and the Czech Republic. Following a brief period of questions and answers, Professor Dellapenna proposed resolutions and called Hungary and the Czech Republic to settle their dispute over the Danube River.

INTERNATIONAL LAW PANEL

October 5, 1999, Budapest, Hungary

The International Law Panel Session was presided over by **The Hon. Mayer Gabay** (Israel), First Vice President, United National Administrative Tribunal and WJA National President for Israel. The rapporteur for this session was **Justice S. A. Akinton** (Nigeria).

On the first topic, "Peace Agreements: Can they sustain their goals?" the working paper was presented by the chairman of the session, **The Hon. Mayer Gabay**. The point was clearly made that the determining factor in ensuring that the goals of the peace agreements are sustained is the existence of mutual interest of the parties in maintaining peace. Similarly the need to always include arbitration clauses in peace agreements aimed at resolving disputes arising from implementing their provisions was stressed as such would be of great assistance in ensuring that peace agreements are sustained. Examples of peace agreements sustained due to the mutual interest of the parties in ensuring that the terms of the agreement are sustained are the Peace Treaty between Egypt and Israel, and the one between Israel and Syria.

The second topic discussed was "Implementing the International Criminal Court." This topic was taken up by three speakers. They are **Dr. Luis Eduardo Boffi Carri Perez**, WJA President for the Americas; **His Excellency Ricardo P. Galvez**, the Solicitor General of the Philippines; and **the Hon. Justice Sunday A. Akinton**, Justice, Court of Appeal, Nigeria.

The need for the establishment of the court to replace the present system of setting up ad hoc criminal courts was emphasized. The over-whelming support for the Treaty establishing the court among the community of nations can be seen from the fact that over 50 Nations

have signed the treaty. But it was noted that some countries, among them, the Philippines, are expressing fears about implementing the treaty as a result of which its ratification is being withheld by many countries. Among the fears expressed are that the roles to be played by the court can adequately be covered under the existing municipal laws and the possibility of conflict between the provisions of the treaty and those of national constitutions which are, in many countries, the supreme law.

A number of problems that may arise in the implementation of the treaty establishing the Court were also highlighted:

- (1) The problem of enforcing the arrest and production of suspected criminals,
- (2) The form the trials should take – whether they should be with or without jury,
- (3) What should be the composition of the court,
- (4) Whether the decision of the court should be subject to review on appeal,
- (5) The fairness of the sentence to be imposed on convicts particularly for mass murder whereas in many countries sentence of death is imposed on murder of an individual, and
- (6) The questions of the appropriate place where sentence imposed by the court should be served and which authority should bear the cost of the incarceration were also raised.

But the unanimous view was that efforts should be made to ensure that the treaty establishing the court should come into force and that all the fears expressed are surmountable.

The third topic taken, “International Cooperation to Prevent and Suppress Transnational Organized Crime” was presented by **Mr. Young-Chul Kim**, Prosecutor, Seoul High Prosecutor’s Office (Korea). The need for international cooperation by every state to suppress organized transnational crime was emphasized. Examples of steps taken by Korea in this respect were given. Among such examples is entering into extradition treaties with a number of countries.

The fourth topic discussed was, “Declining Jurisdiction,” by **Hon. Serafin V. C. Guingona**, (Philippines) President, World Association of Law Professors. The point was adequately stressed that the determining factor in deciding whether jurisdiction is declined is determined by the provisions of the municipal laws, particularly the appropriate constitutional provisions in the Constitution. It was however emphasized that a decision to assume or decline jurisdiction should always not be taken to the detriment of international cooperation to suppress international crime and the need to maintain international peace.

The fifth topic discussed was, “International Rule of Law and the United Nations Reform.” The topic was handled by **Professor Boo-Chan Kim** (Korea) of Cheju National University. After defining the term and scope of the international Rule of Law, it was emphasized that the Rule of Law should be accepted by the international community. This is because the Rule is very necessary for the protection of human society. All nationals are therefore enjoined to embrace the Rule and it is suggested that the United Nations should continue to press for the universal acceptance of the Rule of Law since doing so is necessary for the protection of humanity.

The sixth and last topic discussed was, “Development and Trends in International Law’s Evolution.” This discussion of the topic was led by **Mr. Daniel J. Monaco** (USA), First Vice President of the World Jurist Association. The various stages of the evolution of international law as known today was traced. The evolution of the doctrine of equality of states, the development of the United Nations Organization and the development of the doctrine of the objective of international law in the development of peace and human freedom were traced. It was then noted that an emerging modern trend in international law is the deviation from the old doctrine of consent of states before a principle of international law could be binding on states to a new trend whereby a general principle that where a principle is accepted by many countries, a State would be precluded from deviating from such principle.

DUNAR PALACE RECEPTION

October 5, 1999, Budapest, Hungary

The Ministry of Interior and the Dunar Palace Dancers hosted one of the highlights of this year’s Conference. The reception and cultural program, organized by **H. E. Dr. Sandor Pinter** (Hungary), Minister of Interior of the Republic of Hungary gave the international delegation a chance to explore traditional Hungarian dance and music in the historic Dunar Palace.

The beauty and history of the Dunar Palace captivated the delegates and guests as they enjoyed the reception of local foods and drinks. In his welcoming remarks, the Minister warmly greeted those who had gathered and congratulated the World Jurist Association on its efforts for world peace. He spoke of the importance of continuing this effort.

The Minister then invited **Bill Snyder** from GE Lighting Europe to the stage. Mr. Snyder represented GE Lighting Europe, one of the proud sponsors of the Budapest Conference. In an eloquent and moving presentation, Mr. Snyder presented the World Jurist Association and President Ved Nanda with a piece of the Iron Curtain. This authentic cutting, presented in a framed and certified case, was gifted in recognition and commemoration of this Conference and its celebration of the Fall of the Iron Curtain. Professor Nanda thanked the Minister, GE Lighting Europe and Mr. Snyder for this honor.

EUROPEAN UNION PLENARY

October 6, 1999, Budapest, Hungary

The Key note Speaker, **Valerij O. Yevdokimov** from the Ukraine opened the plenary session before a packed room of WJA delegates. In his capacity as Chairman of High Council of Justice in the Ukraine and President of the Union of Lawyers of the Ukraine, Mr. Yevdokimov presented a detailed description of the present state of the rule of law in the Ukraine. He described the composition of the Constitutional Council and its responsibilities in applying the rule of law.

Mr. Yevdokimov then told the participants that the Ukraine is actively seeking to enter the European Union and that legislation is being passed to achieve

this end. He described the administrative reforms that are taking place in the Ukraine in order to harmonize Ukrainian laws with those of the EU.

Mr. Yevdokimov spoke about the application of human rights laws in the Ukraine. He stressed that the respect for fundamental human rights is an integral part of Ukrainian legislation and is incorporated into the Ukrainian constitution.

Mr. Yevdokimov then touched upon what he considers a "painful problem" in the Ukraine: the evolution of laws relative to the application of capital punishment. He first presented a constitutional basis for the application of capital punishment in the Ukraine: the Ukrainian constitution provides that "nobody may be killed lawlessly". He explained to the WJA participants that the death penalty is only applied for the most "heavy crimes". He indicated that Parliament is seeking to stop the death penalty with the passage of new laws, but that these laws have not yet been passed. One proposal before the parliament specifically calls for a moratorium on the death penalty.

He then spoke about multi-confessionalism in the Ukraine and how the Ukrainian constitution protects the rights of religious freedom. He described how presidential decrees have been passed to correct past abuses of religion freedom.

The next speaker, **Mr. Luis Eduardo Boffi Carri Perez** from Argentina, gave an in-depth report of the important legal documents that provide a basis for the development of European Union law. He described past governmental systems in Europe, including the system of government of ancient Greece, the Roman Empire, to the signing of the Treaty of Westphalia, up until modern times and the development of the modern State. He described his views on how sovereignty is conferred on States, using the example Belgium under Baldwin.

Mr. Boffi stated that state constitutional law should remain a priority as EU law develops. He explained that it may not be a good idea for EU law to take precedent over the laws of EU member states as there is no EU constitution. He stated that the EU should respect the independence of its individual member states. The idea that a union of any kind based solely on an economic model is destined to be short-lived. The objectives

of the EU should be based on the recognition of the dignity of men and the respect of his natural rights, such as his right to live in society, to found a family, and to educate ones children.

He concluded by describing that the only real workable union would be a legal and political union similar to the Austro-Hungary Empire or in Yugoslavia before the recent break-up of the republic. He stated that the reinstatement of the monarchy as the symbol of a union of peoples is the only way to ensure peace for the inhabitants of a union. He stated that past traditional monarchies have evidenced respect of legal rights and that monarchical rule is the only true guarantee of long-term stability within a union.

The next speaker, **Mr. Christian Lange** described how the European Court of Justice is enforcing EU laws. He explained how the European Union is a dynamic evolution of culture and the law. He stated that it is important that we insist on the protection of cultural heritage of EU member states as they move to confer certain powers to an EU central power in order to develop common rules for all members of the Union.

He stated that it is important for EU member states to take part in the negotiation process, in the Council or Parliament, for example, in order to actively participate in the adoption of EU laws.

Following Mr. Lange's speech, several questions were taken from WJA participants, including the WJA past president, **Mr. Lucio Ghia**. Mr. Ghia described how the people of Europe are now being asked to decide their future. He described how in Italy, special taxes are being imposed that will assist Italy to meet the economic requirement of EU membership. He described how Italian national legislation is becoming less important than it was in the past as EU law plays a more important role. He asked the panelists what Argentina or the Ukraine is seeking to gain from membership in the EU.

Mr. Boffi responded by saying that Argentina, for example, is seeking a spiritual union with the EU.

RIVER CRUISE

Hosted by the Hungarian Bar Association
October 6, 1999, Budapest, Hungary

At the invitation of the Hungarian Bar Association delegates and guests of the Nineteenth Biennial Conference on the Law of the World enjoyed a relaxing and breathtaking river cruise on the River Danube. This cruise, organized and hosted entirely by the Hungarian Bar Association and its President, **Dr. Janos Horvath**, provided a delightful conclusion to the 4 days of meetings and events in Budapest. With plenty of food and drinks delegates had the opportunity to meet local legal professionals and their colleagues from around the world in a warm social atmosphere.



Demonstration Trial

October 6, 1999, Budapest, Hungary



Report on the Demonstration Trial

On Wednesday, October 6, 1999, the Demonstration Trial was held in the Supreme Court of Hungary. The Court was comprised of **The Hon. Meir Shamgar**, President, Supreme Court (ret.), Israel, as Chief Justice, and as Associate Justices, **The Hon. Peter Kelly**, Justice, High Court, Ireland; **The Hon. Valerio Onida**, Judge, Constitutional Court, Italy, **The Hon. Mohammed L. Uwais**, Chief Justice, Supreme Court, Nigeria, **The Hon. Mr. Lucian Mihai**, President, Constitutional Court, Romania; and **The Hon. Torkel Gregow**, Chief Justice, Supreme Court of Sweden. The case involved issues relating to extradition and the Vienna Convention on Consular Relations.

Two fugitives, Bonnie Baker and Clyde Dillinger, had committed murders in Beta, where Bonnie was a citizen, and Alpha, where neither was a citizen, and had escaped to Delta, where Clyde was a citizen. Both Bonnie and Clyde had been sentenced to death by public hanging in Beta, and to life imprisonment in Alpha where capital punishment was prohibited.

Alpha was demanding that Delta return Bonnie and Clyde so that they could serve out their life sentences. Beta was demanding that Delta return Bonnie and Clyde so that they could be publicly hanged.

Alpha argued that Beta's method of execution violated present standards accepted by most nations and was a basis for refusing its requests for extradition. Beta argued that no court had held hanging to be violative of any accepted standard for execution, and that the public nature of its method of execution did not offend these standards.

Delta's position as to Bonnie was that, even though it allowed for capital punishment, but prohibited hanging as a means of execution, and limited its method of execution to lethal injection, Beta was free to decide how to execute its citizens.

Delta, on behalf of Clyde, claimed that both Alpha's and Beta's violation of the Vienna Convention on Consular Relations in not notifying Clyde, a non-

Key Note Address

Immediately preceding the beginning of the Demonstration Trial, the Minister of Interior of Hungary, **Dr. Sandor Pinter**, delivered a keynote address to the full audience assembled for this traditional highlight of the World Jurist Association Conferences. His presentation, keeping with the spirit of the Demonstration Trial theme, focused on criminal activity in Hungary and efforts to curb this destructive threat.

Reminding the delegates that Hungary is about to celebrate the 1000th anniversary of her existence as a State, the Minister expressed his hopes that Hungary will soon become a valuable member of the European Union and the developed world.

He then turned his remarks to the status of crime prevention in Hungary. Citing the revolutionary speed in which the economic, political and social changes took place, the Minister explained how the undesired phenomena of crime arose.

- ❖ In 1989 225,000 detected crimes were recorded, while in 1998 the figure was 600,000.

Contact with the outside world, liberal regulations, freedom of movement, open borders and the breakdown of the public administrative bodies eased the efforts of the Hungarian criminals.

Organized crime and corruption

became the biggest threat in this country as it sought to redevelop. With the advice of the European Union and the Council of Europe, Hungary began to develop a series of laws and regulations that would directly address these issues. The Minister detailed the many direct and indirect provisions that have been adopted. The results of these measures are promising, according to the Minister.

- ❖ Compared to the same period last year, the number of detected crimes has dropped 24%. Of this, the number of the cases involving illegal use of firearms declined by 12%.
- ❖ The number of thefts and breaking and entering cases decreased by 16%
- ❖ The number of passenger car thefts fell by 24%.

The Minister stated that these statistics and others prove that Hungary is at a better state than the European average.

In his concluding remarks Minister Pinter stated, "[W]e live in a state where adherence to the Rule of Law is the norm and which wishes to offer safety and justice both to its own citizens and foreign nationals visiting the country."

citizen of Alpha and Beta, of his right to contact his counselor officer invalidated his convictions. Delta's position was that a violaton of the Vienna Convention created a pre se presumption of prejudice. Both Alpha and Beta argued that when such violation occurred, the defendant had the burden of proving prejudice as a result of the violation.

Alpha's position, with respect to Bonnie, was that she had no Vienna Convention claims as to Beta because she was a citizen of Beta. As for Alpha's violation of her Vienna Convention right, Alpha noted that Bonnie waived the violaton and agreed to be returned to Alpha so as to avoi being extradited to Beta where she would be executed.

Delta's position was that, despite Bonnie's waiver and agreement to be returned to Alpha, it had the right to extradite her to Beta.

Beta was represented by **Peter Zamecsnik** of Hungary and **Roger Vanhoyland** of Belgium. Alpha was represented by **Amihud Ben-Porat** of Israel and **Garry Hunter** of the United States. Delta was represented by **Alex Padilla** of the Philippines and **Ronald M. Greenberg** of the United States.

The Court's decision was that Beta's method of execution violated current standards accepted by a majority of nations and, therefore, neither Bonnie nor Clyde should be extradited to Beta. The Court further held that Bonnie should be extradited to Alpha in view of her agreement to be extradited to Alpha.

As for the Vienna Convention issue as to Clyde, the Court rejected both sides' positions and held that a violation of the Vienna Convention created a rebuttable presumption of prejudice, and that the burden of proof was on the country which violated the Vienna Convention to prove an absence of prejudice.

Finally the Court indicated that if the convictions were invalidated, Alpha and Beta could request to have Clyde tried and sentenced in Delta for the murders committed in their countries. The Court did not address what should happen if the convictions of either of them are upheld.



Tenth Anniversary of the Fall of the Iron Curtain

BORDER CEREMONY

October 7, 1999, St. Margarethen, Austria

Thursday, October 7, dawned one of the most memorable events of the Conference. The day began with early morning bus transfers from Budapest, Hungary to St. Margarethen, Austria. This small bordertown welcomed the international delegation with warmth, grace and charm.

For all its quaintness, St. Margarethen is to be remembered today for its historic role in the beginning of the end of the cold war. While the politicians and leaders of the great nations were making unfulfilled promises, the citizens of St. Margarethen, and its Hungarian neighboring town of Sopron demonstrated the ever important role of the individual in bringing about peace.

The World Jurist Association was proud to become a part of the Tenth Anniversary Celebration of the Fall of the Iron Curtain. The speakers who gathered on the Austro-Hungarian border to help celebrate this event provided colorful and often heartwrenching descriptions of the events that led to the Fall of the Iron Curtain and first cut in the barbed wire that stretched across Europe.

Dr. Ivo Greiter (Austria), WJA National President for Austria and the Organizer for the Vienna Conference welcomed the delegates to this historic border, where just a short decade ago stood a barbed wire fence, check points, electric alarms, and guards with instructions to shoot anybody who tried to cross the border from Hungary to Austria.

The host for this moving celebration was the Mayor of St. Margarethen, **Ing. Franz Strasser** (Austria). The Honorable Mayor welcomed the World Jurist Association and its delegates. Although he was not in office in 1989, Ing. Strasser described vivid memories of the time and existence on both sides of the border.

Ing. Strasser then turned the podium over to **Baumeister Kommerzialrat Ing. Andreas Waha** (Austria), who was the Mayor of St. Margarethen in 1989 at the time of this historic event. Ing. Waha, speaking in German (written translation of his speech was made available to the delegates) described the surprise of the

town when the border was opened for 3 hours during the Pan-European Picnic, and the people calling across were German speakers. It was only then that they realized that these were East Germans who sought to escape the horrors of oppression existing in the late 1980s. The people of St. Margarethen opened their homes and shelters to provide for these freedom-seekers. The numbers were overwhelming however the citizens of St. Margarethen did not hesitate to welcome these unexpected guests.

Two additional speakers provided a glimpse of the Hungarian perspective in this dramatic event. First, **H. E. Dr. Geza Jeszenszky** (Hungary), Hungarian Ambassador to the United States recalled the political atmosphere in Hungary at the end of the 1980s. He recognized H. E. Dr. Ibolya David, Minister of Justice of Hungary and leader of the Hungarian Democratic Forum, the party responsible for organizing the Pan European Picnic – which gave way for the opening of the border. The Minister of Justice honored the World Jurist Association by joining in this border celebration and traveling with the delegates to Vienna. Ambassador Jeszenszky reminded all those present that this was an event where individuals ruled the day – the important role of the individual in shaping the Rule of Law can not be forgotten.

Additionally, **Mr. László Nagy**, Secretary of Curatorium at the PanEuropean Picnic '89

Foundation and one of the organizers of the 1989 picnic, described the surprise of the organizers when what was to be a relatively simple

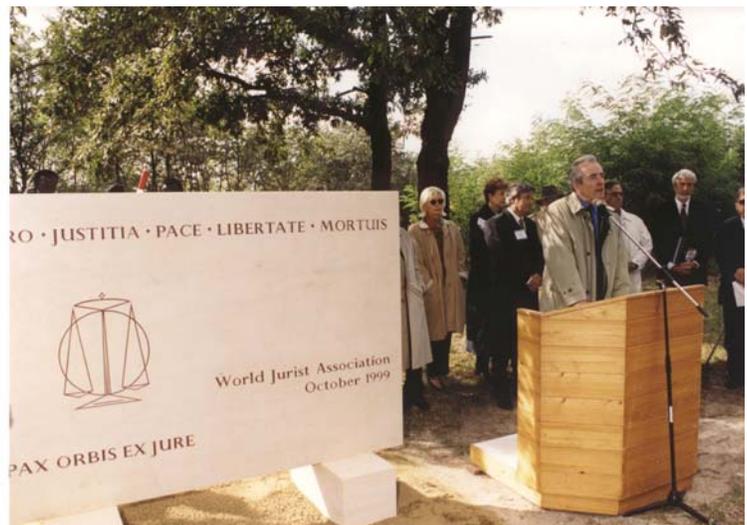
concept – a friendly, happy meeting on the border, became a focal point in the end of the Cold War. The organizers of this picnic

were almost naïve, according to Mr. Nagy. As one article describes it, “The picnic, far above its original purpose, exploded to fame and speeded up the collapse of the state socialist system.” Mr. Nagy congratulated the World Jurist Association for bringing together individuals from around the globe and asked that they all continue to find ways in which individuals can positively impact world peace.

Finally, in his keynote address, **Dr. Alois Mock**, Former Minister of Foreign Affairs of Austria (1987-1995) moved the audience close to tears with his accounting of the horrors brought by the oppressive regimes of communism. With a clear picture in mind of what happens when the Rule of Law breakdown, Dr. Mock spoke to the delegates of the looming danger that history may repeat itself.

“The most important day in my political life” – This is how Dr. Mock characterized June 27th, 1989, in his speech. He explained the background of the story up to the fall of the Iron Curtain and thanked the World Jurist Association for the unshakeable strength with which it seeks to broaden the influence of the rule of law.

Dr. Mock eloquently reminded delegates that they must remain vigilant if they are to protect the freedoms that have been hard won.



Dr. Alois Mock delivered the Key Note Address at the Border Ceremony.



RULE OF LAW MONUMENT

The World Jurist Association is proud to unveil the Rule of Law Monument, which stands on the Austro-Hungarian Border in St. Margarethen, Austria. This Monument, erected in the shadows of the watch tower, where once a soldier stood guard, with orders to shoot all those attempting the cross the border, stands as a proud tribute to the Rule of Law.

On the face of the Monument, built entirely of stone from the local quarry, reads the inscription “Pro Justitia Pace Libertate Mortuis” These Latin words, translated into English, read “ For those who died for Justice, Peace, and Liberty.” This powerful invocation honors those who fought for the establishment of Rule of Law and is a reminder of the delicate balance in which world peace is achieved.

The Rule of Law Monument is more than just a stone standing in a small bordertown. This monument was built with the support and contributions of distinguished and dedicated activists, who have boldly stated their demand for world peace through the Rule of Law. The photographs shown here list the names of the persons who have joined in the campaign. These persons have come together to build this monument and to work for the strengthening the mission of the World Jurist Association. For 36 years the World Jurist Association has worked for world peace through the Rule of Law and this Monument is a symbol of the promise to continue this work for many years to come.

In order to provide an on-going opportunity for individuals to become a part of this effort and the Rule of Law Monument, the World Jurist Association requested the artist to provide sufficient room for additional names to be added. Our goal is to fill the entire back wall of the monument with the names of persons who have declared their support for world peace through the Rule of Law. Your contribution of US\$2,000.00 will allow us to include your name along with the names of other distinguished professionals who share your interest in justice, peace and liberty.

Each contribution of US\$2,000.00 will be recognized on the face of the monument.

Just as the picture of the dove cutting across the barbed wire fence exemplified the first celebration of the Fall of the Iron Curtain, the Rule of Law Monument symbolizes the continuing work of legal professionals around the world who join the World Jurist Association in promoting and fostering peace without violence. A photograph of the monument appears on the next page.



Please complete the form below and return it to the World Jurist Association in order to take part in this special opportunity. You should return this form, along with full payment to:

The World Jurist Association
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 Phone: 202-466-5428
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The Rule of Law Monument



The Vienna Conference Opening

October 7, 1999, Vienna, Austria

The Vienna Conference opened with the style and grace that the delegates had come to expect from this Conference. From the moment they arrived at the Parliament Building the delegates and their guests were greeted by the majestic beauty of this historic city.

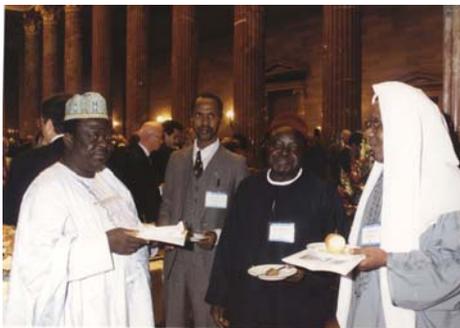
Dr. Ivo Greiter, WJA National President for Austria, Partner in the Law Firm of Greiter, Pegger, Kofler and Partners (Innsbruck, Austria) welcomed the delegates to Vienna and the start of the Vienna Conference. He first introduced **Dr. Heinz Fischer**, President of the Austrian National Assembly and host of the Opening Ceremony Reception.

In his welcoming remarks, Dr. Fischer noted the changes in Europe's political landscape since 1945 and again since 1989 and emphasized that much of the momentum for these changes began at the Austro-Hungarian border. The events of 1989 resulted not only in real far-reaching changes, but also in illusions and unattainable expectations. These illusions had to do first and foremost with the tempo of the transition to democracy and a market economy. Nevertheless, the democracies in East-Central Europe have proven themselves in such areas as the peaceful change of government as a result of changing parliamentary majorities. Law and order have won an ever-increasing foothold in the everyday reality of life in those countries.

Dr. Greiter then invited **Professor Ved Nanda**, President of the World Jurist Association to take the podium. Professor Ved Nanda, took the opportunity to thank Austrian National Assembly President Fischer for Austria's commitment after 1945 in having coped with the stream of refugees in both 1956 and 1968, and then for its exemplary reception of refugees from the East ten years ago.



Dr. Heinz Fischer addresses Opening Ceremony. Also shown: Prof. Ved Nanda & Dr. Ivo Greiter



Vienna Conference Reports

ECONOMICS, FINANCE AND THE LAW PANEL

October 8, 1999, Vienna, Austria

The panel discussed the global impact of the Internet and privatization of telecommunications in the economic development of developing countries. **Professor Andrea Johnson** (USA) chaired this session and provided the report.

The panel began with a special presentation by three law students from the University of Iowa Center for International Finance and Development. **Kristen Berg, Daniel Werner, and James Oliver** gave a demonstration of a website that was developed to focus on the role of the Internet in the financial services industry and how the Internet has transformed how content is regulated.

Entitled, "OneWorld.Com: Coping with the Global Economy of the New Millennium," this presentation was entirely developed by the students, under the guidance of **Professor Enrique Carrasco** (USA). Mr. Oliver surveyed how the Internet has affected the operations of the capital markets. He focused on the behaviors of the market's major players, namely corporations, investment banks, stock markets, institutional investors and individual investors. Ms. Berg addressed the Internet's influence on the work of Non-Governmental Organizations. She described how NGOs have used the Web to launch projects relating to economic and financial issues, such as debt relief. Additionally, Mr. Werner examined how governments are reacting to fundamental changes in the capital markets and to the creation of a global civil society in cyberspace due to the Non-Governmental Organizations' use of the Internet.

Prof. Johnson then provided a framework to look at ways to encourage foreign investment in developing countries through privatization of telecommunications. She identified the steps that investors need to take in evaluating investment opportunities and stressed the need to be sensitive to cultural, political, and internal needs and how information technology can enhance the services provided.

Professor A. Y. Zohny (USA), Strayer University, focused upon privatization efforts in Egypt, as the rising star among developing countries. He traced the efforts made by Egypt since the 1960's and stressed the importance of working with the government and NGOs to foster more direct investment.

DRUGS AND THE LAW PANEL

October 8, 1999, Vienna, Austria

The Drugs and the Law panel session, under the Chairmanship of the World Jurist Association's President, **Professor Ved Nanda**, had three speakers. Each of the speakers, including Professor Nanda, presented their perspectives on this much-debated topic before approximately one hundred WJA participants.

Professor Nanda opened the panel session with an overview of international drug trafficking and States' interest in controlling this problem. He outlined how international law and the application thereof can play a role in preventing the growth of drug related criminality.

The next speaker, **Attorney Venicio Flores** from the Philippines, presented an historical account of the legal efforts being undertaken in his country to confront the problem of drug trafficking. He identified the difficulties that the Philippines has faced in addressing the preventative, educational and informational, and enforcement aspects of the problem. He discussed the challenges of implementation and emphasized the need for concerted national, regional and international action to deal effectively with this menace.

Mr. Andrew Gareleck, an American attorney resident in France began his presentation with an objective overview of U.S. efforts to deal with both prevention and enforcement of laws dealing with substance abuse and crime. He described how drug offenders that return to their communities after having served time in prison many times return only to commit more crimes, push drugs on children, or continue to draw off resources from state assistance programs. He emphasized the need for policy changes concerning the use of funds to fight the societal problems of substance

abuse and related crimes. Only through dealing with the root cause of substance abuse will States be able to reduce the problem of the erosion of public confidence in law enforcement efforts relative to the control of illegal substances.

He asked participants whether their criminal justice systems are effective at reducing substance abuse in order to reduce levels of crime and other social cancers that result from drug consumption and trafficking.

Mr. Gareleck addressed how criminal justice systems could effectively attack the problem of substance abuse and related crime. He stressed that is important to focus efforts on programs that have been proven to work - government programs that have actually reduced crime and drug abuse.

One program Mr. Gareleck described was that of Drug Courts in the United States. These courts specialize in dealing with substance abuse offenders. Drug Courts offer nonviolent criminals with chronic drug or alcohol abuse problems the possibility of supervised treatment instead of prison. He told how defendants who complete a drug court program may have their charges dismissed or probation sentences reduced. He noted how by failing to deal with first time or non-violent offenders in this way, the criminal justice system actually perpetuates the cycle of drugs and crime. By sending first time or nonviolent offenders straight to prison, we only put them in an environment where they can develop their criminal trade and learn even more dangerous criminal acts from those who have already advanced in the hierarchy of criminal offenses.

Mr. Gareleck presented examples of how Drug Court programs have worked to reduce crime in communities throughout the United States.

Mr. Gareleck then proceeded to present guidelines for a more effective approach to dealing with substance abuse and related crime:

- 1) Changing Perceptions: He explained that too many people believe that drug treatment and programs like the one described above are somehow "soft on crime." In reality, these programs are

often as demanding of the individual as time in prison.

- 2) Develop firm, but flexible approaches: Mr. Gareleck stated that it is clear that law enforcement requires tough sanctions on those that break the law, including those who sell drugs. He explained that these sanctions provide an important tool for prosecutors to work up the ladder of the drug supply and attack the traffickers. However, mandatory sentencing procedures often tie the hands of judges, preventing them from exercising discretion and good judgement. The Drug Court initiative allows judges the flexibility they require to impose sentences that will actually have an impact on drug use and crime.
- 3) Mr. Gareleck also stressed the need to expand early intervention and to focus on drug prevention to cut crime in our communities.

In conclusion, Mr. Gareleck presented his thoughts on how drug enforcement agencies and drug and alcohol treatment professionals must work together to reduce drug abuse among the offender population in order to reduce crime. He emphasized the need to accelerate the development of drug treatment programs that offer alternatives to imprisonment for certain nonviolent drug and alcohol abusing criminals. He pleaded for national criminal justice systems to develop programs that will help drug offenders to break away from their addictive habits during the time they are under the control of the criminal justice system.

DEMOCRACY AND THE RULE OF LAW PANEL

October 8, 1999, Vienna, Austria

The Chairperson, **Chief Judge M. B. Belgore**, and **Honorable Justice Umaru Abdullahi** spoke on the difficulties confronting nations on their path from Dictatorship to Democracy. From the papers read by the two speakers, the evils of Dictatorship and the blessing of Democracy were well analysed, one being a Government without caution, without checks and balances, with reckless disregard for human rights, decency and sanctity of human life; while the other is a Government that is cautious, considerate, accountable and responsible to the people.

The debilitating effect of Dictatorship on the spirit of the people from seeking freedom and having elective Government was highlighted. The political deception of Dictatorship of being democratic when it is not and equating dictatorship to democracy was discussed.

The papers touched on the problem of legality of Dictatorship in International Law and the practical application of the effect of that theory.

They discussed the apathy of the citizenry under Dictatorship, oppression, the bastardisation of democratic norms and principles and the problem of encouraging them to fight for the return to Democracy. They outlined different methods of encouraging them to fight for the return of Democracy. They outlined different methods of encouraging the people to claim their lost right to Democracy and how a transitional timetable must be set for changing Dictatorship to Democracy – formation of Political Parties and the conduct of elections.

Finally they highlighted the role of the Judiciary in helping the change over no matter under what trying conditions. From the examples given in the two papers read by the speakers, the conclusion they reached in their papers was that the Judiciary should be regarded as the armour, the last hope and bastion of Democracy from Totalitarianism and Dictatorship.

The second paper, delivered by **Madam Simha**, dealt with the threats to Democracy and freedom of the Rule of Law. Starting with the impetus since World War II about the need for democratization and governance all over the world, with its after effect being respect for human rights and legal settlement of National and International disputes, the principles was made clear by the United Nations embracing Montesquieu writing on equality and love of Democracy.

Democracy stands for Justice, Freedom, Equality as well as Human Rights. She touched on the Athens Declaration of the Rule of Law laying emphasis on Lincoln's Gettysburg address of government of the people, by the people, for the people. She deliberated on the threat to Rule of Law and the duty of the court to protect the Law. That the State is bound by the Law and that Governments should respect human rights

and judges should protect these rights. She gave examples of the Israeli Court's bold pronouncements on the Rule of Law and ended the paper with a quotation from a judgement of the Israeli Supreme Court that:

"Although a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand. Preserving the Rule of Law and recognizing an individual's liberty constitutes an important component in its understanding of security."

The third paper on Rule of Law and equity in a legal interpretation was presented by **Professor Byung-Sun Oh** (Korea). He talked about the Ideal of Rule of Law as a relief from arbitrary exercise of power stating that Democracy and Rule of Law went hand in hand as the concept of Rule of Law as propounded by Dicey. He gave examples of Korean constitutional cases on the Rule of Law and justified the condition of how retroactive legislation was accepted on the trial of State Criminals and the effect of Statutes of Limitation on such trials. He concluded by discussing how to match the Rule of Law with the Rule of Equity through statutory interpretation by judges, showing the approach of Judges, whether pragmatic or subjective, from Korean experience.

The last paper, given by **the Honorable Alexander Paskay**, dealt with Bankruptcy as to whether it was a curable or terminal illness. He discussed financial distress and its ultimate result leading to insolvency with various legislative attempts to deal with the problems particularly with liquidation vis a vis rehabilitation. Measures should not be harsh to discourage entrepreneurs taking risks which are essential to business. Legislation regarding insolvency should not be vindictive, though it must be binding on all creditors.

Examples were cited on the United States experience on Insolvency. Insolvency was reexamined and many administrative proceedings of dealing with the issue were highlighted. He suggested that instead of distributing the assets of insolvent companies, there should be a case for reorganization where the going concern value of the business would be regarded as a valuable asset and the management of the business might be allowed to remain and continue to operate under conditions laid down by the court.

The Panel's conclusion on all the topics discussed was that promotion of Democracy and the enforcement of the Rule of Law should be of utmost importance for National and International Communities.

INDIVIDUAL FREEDOMS AND RIGHTS PANEL

October 8, 1999, Vienna, Austria



Left to Right: Prof. Wha-Sook Lee, Prof. Ved Nanda, Mr. Samuel Jay Levine, Prof. Dr. Ludwig Adamovich, and Justice Deon Van Zyl

Professor Ludwig Adamovich, President of the Constitutional Court of Austria, delivered the keynote Address before this panel and spoke on the topic entitled: "Does an individual have the right to make a decision about his own life?". He described it as an extremely difficult issue which relates to human rights, criminal law, civil law as well as hospital and medical ethics. The human rights aspect is directed at whether defenses against state encroachment upon individual rights is the issue, or whether it is that the state is obliged to protect the individual. The ethical or moral dilemma arises when individuals are confronted with a mental or psychic state of emergency which reduces his or her ability to make well-considered decisions about his life.

In this regard reference was made to the approach of the Church and criminal law to suicide and passive euthanasia based on an individual's free will. This appears also from a recommendation adopted by the Parliamentary Assembly of the Council of Europe in June 1999 and dealing with the protection of human rights and the dignity of the terminally ill and dying. The recommendation recognises, on the one hand, the need to protect the right of a terminally ill or dying person to comprehensive palliative care and, on the other hand, the need to protect such person's right to self-determination. There is, however, an express prohibition against intentionally

taking the life of someone who is terminally ill or dying. Although he or she has the right to determine the way in which death will ensue, this does not include the right, however freely expressed, to be killed. In this way a balance is achieved between possible conflicts of value judgments.

Professor Samuel Jay Levine (USA), Professor of Law and a practicing lawyer, gave a brief overview of human rights from the time of the Holocaust to the present stage, being the end of the millennium. It commenced with the *UN Charter* of 1945 and the *Universal Declaration of Human Rights* of 1948. This was followed by a number of conventions and protocols dating from 1951 to 1991, dealing with matters like genocide, the status of refugees, political rights of women, the international right of correction, war crimes and crimes against humanity, torture and other cruel, inhuman or degrading treatment or punishment, the rights of the child and the abolition of the death penalty. This has all been the result of the almost total acceptance of the *Charter* and *Declaration* as the foundation of customary human rights law in the 20th century. In the meantime international human rights have been expanded by the activities of regional organizations such as the Council of Europe, Benelux, the South East Asian Treaty Organization, the Organization of African Unity, the Inter-American Commission and the League of Arab States. Of great importance in this regard were the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (1953) and the *Helsinki Accords* of 1975. The prospects for the human rights agenda in the next millennium look good as individual rights grow globally and the role of state sovereignty is reduced.

Judge Deon van Zyl spoke on "People's Rights in Everyday Life and Threats to These Rights". After discussing the meaning of the relevant concepts, he dealt with three recent South African judgments as illustrative of the protection of such rights. The first was the case of Patricia de Lille MP, who was suspended from the South African Assembly for 15 days on the grounds of "unparliamentary behavior". The suspension was set aside on appeal and



this result was confirmed by the Supreme Court of Appeal.

The second case dealt with the rights of residence of alien spouses married to South African permanent residents. The duty to pay certain fees and the restrictions on their rights to be with their families was held to be unconstitutional on the basis of infringement of the dignity of both spouses and their children.

The third case related to the setting aside of extradition procedures against a German national Jürgen Harksen, on the grounds of defective and unsatisfactory interpretation of the proceedings.

Professor Wha-Sook Lee (Korea) discussed the issue of freedom of divorce versus the best interests of children born of the marriage now sought to be set aside. She explained how Korean divorce law had developed from the basis of fault to the basis of no-fault. She made observations on the nature of and procedure relating to Korean divorce law as compared with that of a number of Western countries. The role of the Family Court in this regard was highlighted.

Thereafter Professor Lee turned to a discussion of the increasing divorce rate against the background of social change and the objectives of divorce law. Her greatest criticism was directed at the fact that children's interests were not properly considered in granting the divorce. This, she said, should be fully reconsidered. Her proposal was, in fact, that the best interests of children should in fact be the only ground to be considered in finalizing a divorce. The procedure should be children-centered rather than adult-centered.

The discussion and comments emanating from the papers were lively and indicative of great interest in the subject matter of the panel session. It ranged from abortion rights for women to criminal inroads into the day to day life of innocent and peace-loving citizens.

MAYOR'S RECEPTION

October 8, 1999, Vienna, Austria

The evening closed with a reception hosted by the City of Vienna at the Weingut Fuhrgassl-Huber. In his message of greeting, **Mayor Michael Häupl** welcomed the Conference delegates to Vienna. Vienna is the United Nation's number three city, after New York and Geneva, and the seat of many international organizations. Vienna also ranks among the top three cities in the world for conferences and conventions. By holding its 19th Biennial Conference in Vienna to mark the tenth anniversary of the fall of the Iron Curtain, Vienna's function as a gateway between East and West is emphasized yet again.

At the reception, the City of Vienna was represented by her Vice Mayor, **Dr. Bernhard Görg**. Vice Mayor Görg delivered warm greetings to the delegates in an entertaining and lively address.

The President of the Austrian Congress of Jurists, **Gerhard Benn-Ibler**, delivered the greetings of the Austrian jurists. He pointed out that the primary threat today is no longer so much that of a large-scale global war. Today's major challenge is more the prevention of small wars between ethnic and religious groups, wars that are accompanied by horrible atrocities. Human rights and political freedom are only possible against a background of a certain amount of economic strength and independence.

Following these brief welcoming remarks, the delegates and guests enjoyed a traditional evening of Austrian food and wine.



Dr. Ivo Greiter welcomes the delegates to the reception.





CLOSING CEREMONY

October 9, 1999, Vienna, Austria

Mr. Antonio Garrigues Walker (Spain) delivered the keynote address for the Closing Plenary Session, which was held Saturday, October 9, at the Hotel Intercontinental Vienna. Mr. Garrigues called upon the legal profession to “play a decisive role” in the task of “promoting a critical attitude that will return to the human being the decisive principle of personal responsibility.” He reminded the delegations that the globalization process requires the creation of new global institutions and a new legal system, and most urgently, a new international criminal court. The challenges of the new millennium are already upon us and it is time for the legal profession to respond collectively.

Some interesting data, which Mr. Garrigues provided, may be familiar to readers browsing the web: If the Earth’s population were reduced to a village of 100 people, and all current ratios were kept the same, there would be

- 57 Asians, 21 Europeans, 14 from the Western Hemisphere and 8 Africans
- 51 females and 49 males
- 70 non-white and 30 whites
- 70 non-Christians and 30 Christians
- 50% of the entire world’s wealth would be in the hands of only 6 people and they would all be citizens of the US
- 80 would live in substandard housing
- 70 would be unable to read
- 50 would suffer from malnutrition, 1 would be near death, 1 would be near birth. Only 1 would have a college education and no one would own a computer.

This data is what Mr. Garrigues asked all jurists of the World Jurist Association to keep in mind in developing an agenda for the future.

Following Mr. Garrigues’ address **Professor Ved Nanda** called upon the

rapporteurs of the various panels to deliver brief reports on the work accomplished during the panel sessions beginning in Budapest and concluding in Vienna. The text of many of these reports are presented here.

These reports provided the context in which the Declaration and Resolutions of the Nineteenth Biennial Conference on the Law of the World were presented to the delegates. **Mr. Itzhak Nener** (Israel), WJA Honorary President and Chairman of the Resolutions Committee presented the declaration and resolutions as drafted by the members of the committee. The committee consisted of the following distinguished persons: **Ivo Greiter (Austria), Ram Jethmalani (India), Ved Nanda (USA), Itzhak Nener (Israel), Wolfgang Schulz (Germany), Hans Thümmel (Germany), Deon Van Zyl (South Africa), and Dan Winn (USA)**



The Declaration and Resolutions were each adopted unanimously by the delegates and members of the Nineteenth Biennial Conference on the Law of the World present. For a copy of the Declaration and Resolutions please contact the World Jurist Association headquarters in Washington DC.

BANQUET

October 9, 1999, Vienna, Austria

The Conference concluded with the invitation to the Palace of Justice extended to the delegates by Chancellor **Mag. Viktor Klima** and Minister of Justice **Dr. Nikolaus Michalek**. The evening in the Assembly Hall of the Palace of Justice was a particularly special experience for those delegates from countries where the justice system, democracy, and the control of society and the state through the checks and balances provided by courts is not yet so fully developed. The architecturally grand Palace of Justice demonstrated for many participants – particularly those from

Africa, Asia, and America – the status that the courts and the administration of justice enjoy in Austria.

Minister of Justice Michalek pointed out that a lasting balance of divergent interests can only be attained in democracies that are built upon a foundation of rule of law and a free market economy. This, in turn, contributes to a strengthening of peace under the law, not only in one’s own country, but also in the worldwide community of nations.

The Indian Minister of Justice, **Ram**



Austrian Minister of Justice, Dr. Nikolaus Michalek, addresses the Banquet.

Jethmalani, who was in Austria for the first time to attend the Conference, reported on the great importance attached to law and to judges in India. Minister Jethmalani is a long time friend and supporter of the World Jurist Association and he called upon his fellow delegates and members to use this opportunity to make a renewed commitment to world peace. He cautioned against becoming lax and resting on past successes and encouraged a strong, dynamic and active participation by all.

The remarks of the newly re-elected President of the Austrian Bar Association, **Klaus Hoffmann**, were greeted with special applause. He stressed the importance of an independent legal profession in a free society. Hoffmann pointed out that the independence of the

legal profession is the gauge by which to measure the degree of freedom in a society, because the first step on the path to dictatorship is to limit and finally eliminate the independence of the legal profession.

During a special ceremony, **Mr. Valerij A. Yevdokimov**, Chairman of the High Council of Ukraine presented a silver medal of honor to **Ved P. Nanda**, **Mrs. Margaret Henneberry**, **The Hon. Serafin V. C. Guingona**, and **Daniel J. Monaco**. These awards recognized the work and contribution each person had made to the efforts of world peace through the Rule of and Law in general and to developing relations with the Ukraine and the CIS region in particular.

With much anticipation and enthusiastic applause, WJA President **Ved P. Nanda** announced the results of the Board of Governors elections and introduced **Mr. Daniel J. Monaco** (USA) as the new President of the World Jurist Association. Mr. Monaco spoke of the important role of international law and

outlined his ideas for the coming two years.

Mr. Monaco has been involved with the World Jurist Association for many years beginning with the Cairo Conference in 1983. He has attended and participated in all of the subsequent Conference and many of the regional seminars. As a member of the Board, Mr. Monaco has served as President for the Americas, Third Vice President, Second Vice President, and First Vice President, as well as Membership Chairman and Finance Chairman.

Mr. Monaco seeks to work together with the other officers and the members in order to expand and strengthen the World Jurist Association, with a special focus on the youth. "Support in a very activist way must be given to not only the Rule of Law but law tempered with justice meted out by a world judicial system."



SPECIAL APPRECIATION

The World Jurist Association and its Board of Governors wishes to express its sincerest appreciation to all those who dedicated their time and energy to ensure the success of the Nineteenth Biennial Conference on the Law of the World.

Of special note are the members of the staff in the Washington DC Headquarters Office, **Andy Jung** and **Sona Pancholy**. The interns who volunteered their time during the preparation work: **Aline El Ayari** (Spring 1999), **Marsha Sullaway** (Spring 1999), **Sara DeForge** (Summer 1999), **Francesca Romano** (Summer 1999) and **Krisztina Tillinger**, who worked first as an intern in Washington and then joined the local volunteers in Hungary as well.

The Conference could not be accomplished without the many volunteers in Hungary, Austria and around the world. Thanks to **Jürgen and Veronica Kleffner**, and **Manuel and Charo Alonso**, who have tirelessly donated their time year after year; **Andrew Gareleck**, who provided many of the reports for this newsletter; **George Ban**, WJA National President of Hungary, **Dr. Lipot Hóltzl**, at the Ministry of Justice, **Erika Steigerwald** and her staff, at the Hungarian Supreme Court, **Eszter Szabo** at GE Lighting Europe, and **Dr. Ivo Greiter**, WJA National President for Austria and the many volunteers who assisted him. The WJA also thanks **Austrian Airlines** for its cooperation and assistance as the official carrier. To those, who have supported the Association and the Conference, the WJA expresses its deepest gratitude and hopes that you will



Members of the Board of Governors Present at the Closing Ceremony.

WORD FOR THE FUTURE

The World Jurist Association has hosted the Conference on the Law of the World every two years since 1963. As this year and this century come to a close, it is important that the officers, the members and the friends of the association reflect upon the impact they have had and consider the work that is yet to be done.

The Twentieth Century began with a boom period – vast advances in research and development were seen around the world, new nations were gaining stability and strength, the concepts of freedom and law were on the minds of the great thinkers and the joy in culture and adventure were being explored. Such promise could not have foreseen the devastation and destruction that would capture the lives of the world's citizens during the middle of the century. The impact of this violence and brutality is still being felt today.

Yet the Twenty-First Century is also beginning with a similar promise of the early 1900s. Modern science and computers promise to take us to places we have never imagined. Democracies are being established even as borders are being redefined to better reflect the will of the people. The need to protect one's identity and culture is an important aspect of scholarly discussions. We are again faced with a choice – we can build on these hopes and dreams, or we can stand back and watch it crumble.

If it is true that history repeats itself then it is also true that mankind can learn from the past. The World Jurist Association is committed to ensuring that the lessons of the twentieth century are not forgotten, even as we adapt and change to accommodate the twenty-first century.

This year was an ideal year for the building of a Rule of Law Monument. This monument stands as a tribute to the success of the past and a reminder of the devastation that comes with failure. It is our hope that the members of the legal profession around the world will look to this monument and the many other achievements of the World Jurist Association and join us in continuing our mission for world peace through the Rule of Law.

.VIDEO TAPE OF THE CONFERENCE

A Commemorative Video of the Conference Highlights and Special Events, such as the Opening Ceremony, the Demonstration Trial, the Unveiling of the Rule of Law Monument and other memorable events is available from City Stage Productions.

To Order this Commemorative Video
Mail Check or Money Order Payable to:
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