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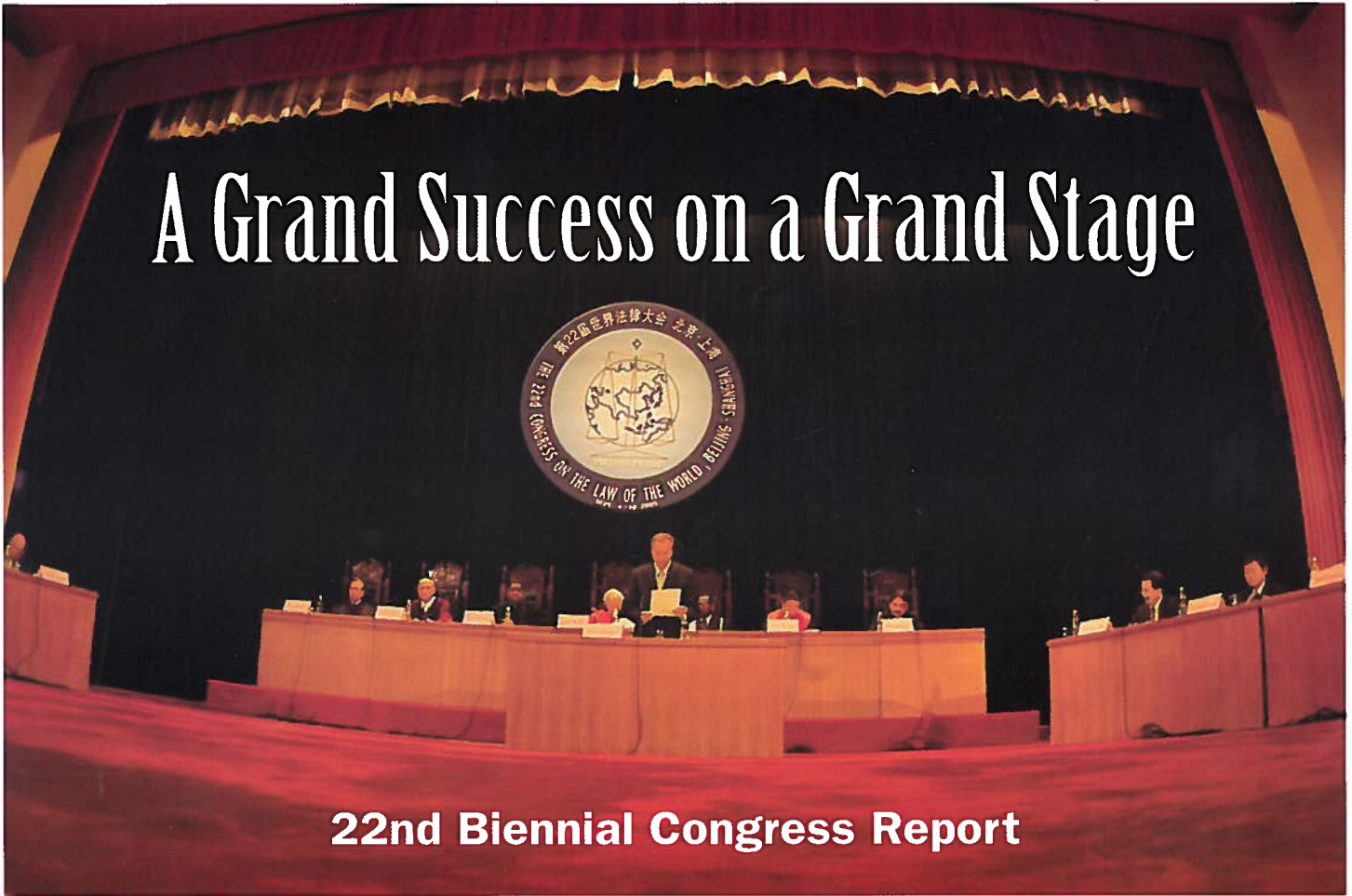


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The World Jurist

BULLETIN OF THE WORLD JURIST ASSOCIATION

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A Grand Success on a Grand Stage

22nd Biennial Congress Report

Attended by over 1,000 delegates representing over 60 countries from throughout the world, the World Jurist Association's 22nd Biennial Congress on the Law of the World was a significant and grand success in pursuit of promoting world peace through the rule of law.

The Congress, held September 4-10, 2005 in Beijing and Shanghai, China, presented 22 topics facing the international legal community. With Chief Justices and other dignitaries representing a broad range of political and judicial systems participating actively in the discussions held by delegates, the Congress was an enormous success. The Congress was highlighted by a successful demonstration trial (pictured above)

addressing legal issues surrounding airborne pollution in an international environment.

The work of the Congress will serve as a strong foundation upon which the Association will build during the coming years. To guide this journey, the Congress elected and saw the induction of a new Board of Governors, headed by its newly elected President, Ronald M. Greenberg.

Throughout this special double issue of the *World Jurist*, highlights and photographs of the Congress are provided to share the important dialogue that took place at the Congress venues. The World Jurist Association would like to thank all who participated in this historic Congress, as well as the hosts and organizers.

President's Message

Dear Members,

With the conclusion of the WJA's 22nd Biennial Congress, which was one of the WJA's most successful Congresses, it is now time to look ahead and to build upon that success. As your new President, I will do all that I can to help build upon that success. However, I cannot do it alone. I will need the input and assistance of our members.

We have today means of communicating that were nonexistent when the WJA was founded over 40 years ago. One of my goals will be to utilize these means of communication to encourage a much more active membership. To that end, I ask each of you to communicate to me your ideas on how to advance the objectives of the WJA and to tell me how you can assist in that advancement. You can do that through the WJA's e-mail: wja@worldjurist.org. In reality, the future success of the WJA is dependent upon an active and involved membership.

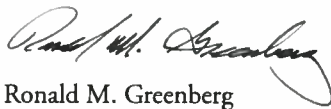
From its inception, the WJA, initially known as the World Peace Through Law Center, has had as its primary objective to promote and foster world peace through the rule of law. That objective remains and is, in today's world of turmoil and terrorism, one that must continue to be advanced by the WJA. I look forward to your ideas on how best to advance that objective.

Another topic upon which I would like our members to focus is how best to expand the WJA's membership. To that end, I will be looking especially to the WJA's National Presidents for ideas particular to their geographic areas. The greater our membership base, the greater will be the opportunity for meaningful dialogue among persons of different cultures and political systems. This, in turn, will create a more likely possibility for reaching a consensus and the WJA's objective of promoting and fostering world peace through the development of the rule of law.

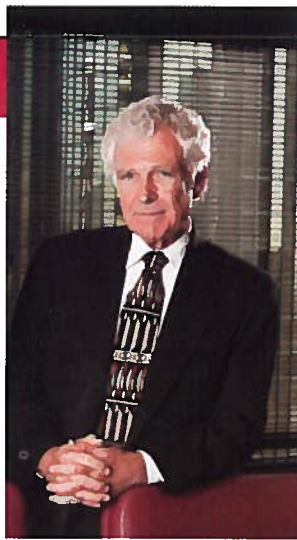
As you reflect upon how you can become a more active member in the WJA, you should mark your calendars for May 22-24, 2006. At that time, the WJA will be holding a Regional Conference in Edinburgh, Scotland.

In closing, I would like to thank all the members who attended, and especially those who participated in the WJA's 22nd Biennial Congress. Without your attendance and participation, it would not have been the success it was.

Warm regards,



Ronald M. Greenberg



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If you have additional photos or comments on the 22nd Biennial Congress that you would like to share, please address them to wja@worldjurist.org

The World Jurist Association would like to thank

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22nd Biennial Congress Report

SUNDAY, SEPTEMBER 4

World Law Day

The biennial World Law Day celebration promoting the rule of law in the world was held at the Beijing Guest House's main hall amidst a beautiful garden setting. Highlighting the importance of law in creating a harmonious international society, Chief Justice of China Xiao Yang, WJA President Valeriy Yevdokymov, First Vice President Ronald M. Greenberg, and Vice President of the Supreme People's Court Wan E'xiang provided opening remarks for the Congress and laid the groundwork for the important discussions that were to come.

MONDAY, SEPTEMBER 5

Opening Ceremony

The Great Hall of the People in Beijing welcomed delegates to its grand auditorium for the Congress' opening ceremony. Before an audience of several thousand delegates from around the world, Chief Justice Xiao, President Yevdokymov, and a number of other dignitaries representing the WJA and the international judicial and legal communities provided opening remarks outlining the theme of the Congress and the importance of the Congress' efforts in creating a harmonious international society supported by the rule of law.

International Terrorism

Prof. Ved Nanda, University of Denver School of Law (USA), chaired the panel, introducing the topic as one of worldwide concern. International terrorism is a problem at all levels of society and must be stopped. Protecting freedom is of critical concern, and finding reasonable political solutions should be government's primary goal.

The panel was co-chaired by Zhao Yongchen, Deputy Director of the Anti-terrorism Bureau of China's Ministry of Public Security. He noted that terrorists develop from several different motivations, including religious and political inclinations. He noted that China is against all forms of terrorism, and instituting effective antiterrorism measures is needed, particularly by addressing its root causes. He also indicated strong support for the importance of the United Nations in fighting terrorism.

Robert Berkes of Berkes Crane Robinson & Seal, LLP (California, USA) discussed the role of terrorism insurance in providing stability, protection, and compensation to those who have suffered losses in terrorism-related events. Insurance gives victims an opportunity to avoid litigation, while establishing recovery amounts in line with need and costs. He also spoke about a present desire for insurance companies to eliminate terrorism coverage and the role of the Terrorism Risk Insurance Act



President of China Hu Jintao and Leading Jurists at the 22nd Biennial Congress on Law of the World

(TRIA) in the United States, which is set to expire at the end of the year.

The following speaker was Feng Xiguang, Spokesman of the Public Security Bureau of Xinjiang Uyighur Autonomous Region of China. He spoke on the need to quicken the response to terrorist activities and increase anti-terrorism measures. He also noted the need for a global response to terrorism with unified standards around the world. Prof. Tadeusz Kozluk of the Independent College of Business and Administration (Poland) spoke about the very definition of terrorism, indicating that the word has over 100 different definitions and can mean very different things to different people. He also spoke about the difficulty in defining balance between human rights and security, as security measures to protect against terrorism can infringe upon human and personal rights.

The Director of the International Security Research Institute of Wuhan University (China), Mo Hongxian, spoke on the financial elements of terrorism. Terrorists tend to receive financing from donations or internal operations, and that large portions of terrorists' money comes from overseas. She also spoke on China's efforts to prevent money laundering to fund terrorism and the country's work on an antiterrorism Act.

Kim Quarles, Senior Vice President, Executive Risks, Willis of New



York (USA), addressed the issue of terrorism insurance, asking the question of whether terrorism is an insurable risk, noting that insurance was the largest single source of recovery after September 11, 2001, and if legislation such as TRIA is not in place, that source of recovery will no longer exist.

Li Wei of China spoke on the need for international cooperation in combating terrorism. Globalization has played a key role in promoting terrorism and making terrorist acts easier to accomplish. Additionally, it is now much easier to instill a terrorist ideology in people than in the past.

Prof. Nanda concluded the session by noting that terrorism is not only a

legal problem, but encompasses economic, social, and political issues as well.

Family Law

Professor Margaret Somerville, McGill University Faculty of Law (Canada), chaired the panel. Her co-chair was Professor Xia Yinlan, University of Political Science and Law (China). Prof. Xia briefly introduced the panel's topic, highlighting some of the social trends impacting family law, including divorce and changes in attitudes toward domestic violence. She highlighted the need to share information across borders to promote cross-fertilization of ideas.

Cherie Booth QC (United Kingdom) discussed recent efforts in the United Kingdom to combat domestic violence. She outlined new legislation in the UK, which treats domestic violence as a serious crime, separate from more general crimes such as assault. Ms. Booth also noted that the law promotes coordination among government agencies. Ms. Booth's presentation provoked a host of questions from the audience, who sought more information to understand some of the specific aspects of the U.K. program.

Professor Long Yifei, Renmin University Law School (China), spoke on states' legal responsibility for AIDS orphans. Professor Long highlighted related efforts in the United Nations,



including a General Assembly draft declarations. She reported that in 1998, the Chinese Government, including its Ministry of Health, adopted a long-term action plan, which includes monitoring, prevention, and anti-discrimination to protect victims and orphans. In 2001, China embarked on a ten-year action plan to strengthen its efforts.

Dr. W.G. McCarney, President of LAYFIM (Northern Ireland), spoke on implementing the International Convention on the Rights of the Child, highlighting the challenge for judges. Dr. McCarney noted that implementing the Convention is a crucial task for judges. Through an intricate web of enforcement, courts can make the Convention truly effective. He cited a few examples for South Africa and the European Union, and laid out many of his recommendations in his thought-provoking work paper.

Senior Judge Zhao Peili, Vice President of the Yunnan High People's Court (China), provided an interesting overview of the custom of marriage and family among China's Yunnan ethnic minorities. She began with a brief overview of the province and the customs of its peoples, and then specifically highlighted social and cultural issues impacting family law. She noted the need to strike a careful balance between respect for traditional values with the need to promote norms

consistent with contemporary conceptions of human rights that protect women, children, and others who suffer discrimination and abuse.

Gemma Leticia Tablate, Court of Appeal (Philippines), spoke on the topic of responsible parenting. Judge Tablate spoke critically of a draft bill in the Philippines promoting a two-child policy, which is being touted as way to cure many of society's ills. She argued that the focus should be on fighting widespread graft and corruption, inadequate resources, unequal land distribution, poor education and health-care, unemployment, and an oppressive foreign debt. As regards the family, she argued that legislators should empower married couples to make socially responsible choices, consistent with their liberty to reproduce.

Chen Mingxia, Researcher of the Chinese Academy of Social Sciences (China), discussed revisions to China's marriage law and the prevention of domestic violence. Ms. Chen provided a brief history of domestic violence in China, and then discussed how China is tackling this problem. She noted that the 4th World Congress on Women, in 1995, raised the consciousness in China regarding the scourge of domestic violence. In 2001, China revised its marriage law to help eradicate domestic violence, which now contains very specific provisions for protecting women

and children. Certain problems, she noted, inevitably remain and will have to be studied and remedied.

Professor Somerville took a few minutes to address some provocative issues of family law, including unlinking the child-parent biological bonds, adoption by same-sex couples, and the impact of new reproductive technologies. These questions, she argued, raise profound ethical and legal issues that will have to be confronted and studied.

Real Estate and Property Law

The Real Estate and Property Law Panel was organized by the International Municipal Lawyers Association. Through a discussion of current reform efforts, case studies of recent development projects, and comparisons of the regulation and administration of land use law the panel provided the delegates with a careful look at how critical land use laws are to sustainable development in a society. The panel was chaired by Daniel J. Curtin, Jr., Bingham McCutchen, LLP (USA); and co-chaired by Wang Jiafu, Tenured Researcher of Law Institute of Chinese Academy of Social Sciences and Chair of the Academic Committee of China Law Society (China). The Chairs introduced the panel by noting that in China the local and national governments have started to look more carefully at the concerns of land use planning. They also emphasized the



importance of planning to address universal and key issues of importance to society.

Professor Wang Liming, Renmin University of China, and President of Civil Law Research Institute of China Law Society (China) spoke on the reforms to the Chinese Civil Code with respect to real estate and the law of the Right Over Things. He noted several key areas of controversy in the current draft of the law, which will address, among other things: types of ownership, rights regarding farmland, registration of property, authority of the registrar, and bona fide acquisitions.

Professor David Callies, University of Hawaii at Manoa, Richardson School of Law (USA) addressed the difficult issue of eminent domain. Professor Callies drew upon his extensive knowledge and research around the world to compare the rising concerns on the subject in Eastern Asia with those in the United States. The key issues all governments, operating through the Rule of Law, must address are: (1) process, (2) relocation, and (3) fair compensation.

Increasingly governments are exercising eminent domain for development projects. John R. Basey, Q.C. Director of Planning & City Solicitor, Victoria, BC (Canada) shared a case study of a successful development project in his community where balance, growth and sustainable development were the government's key objectives. Public

participation in the process was key to the success of this development project.

The next speaker, Yin Luxian, Vice President of Jiangxi High People's Court, Senior Judge, Council Member of Civil Law Research Institute of China Law Society (China), discussed the Chinese judicial attitude toward solving real estate transfer disputes. He examined the role of registration and the right of property owners under current Chinese law.

Yang Jianjin, Director of Real Estate Commission, Beijing Attorneys Association (China) also spoke about the registration process for property in China. He noted some of the difficulties caused by the very broad powers in the laws, as well as the fact that there is not a single unified law to guide the system. At this time the laws only address administration of property and cannot properly address management or planning. This is the focus of current reform in China.

Through case studies Edward Sullivan, Garvey, Schubert & Barer, (USA) examined commercial development in cities. The case studies provided insight into how various regulatory, taxation or government taking schemes can impact the outcome of a project.

Finally, the themes of eminent domain, property rights, and land use reform were effectively summed up by Dan Curtin during his closing remarks. Dan discussed the use of the General Plan, drawing comparisons between the strong emphasis on these plans in China

as well as in the various local and state communities in the United States.

International Criminal Law

The panel was introduced by co-chair Zhao Bingzhi, Professor and Dean of the Research Institute of Criminal Law of Beijing Normal University (China). He turned the floor over to the session's chairman, Samuel Levine, Professor at Syracuse University's School of Law, who spoke about the significant role of globalization on the development and expansion of international crime, not only in traditional areas but new types of crimes as well.

Jose de la Cuesta, President of the International Association of Penal Law (Spain), spoke on the role of international law in the criminal arena. He noted that international law has been used mostly to deal with war crimes. He suggested the potential opportunity for an international criminal court, but such a body would have to overcome many obstacles, including respect for the values and norms of numerous historical and legal traditions.

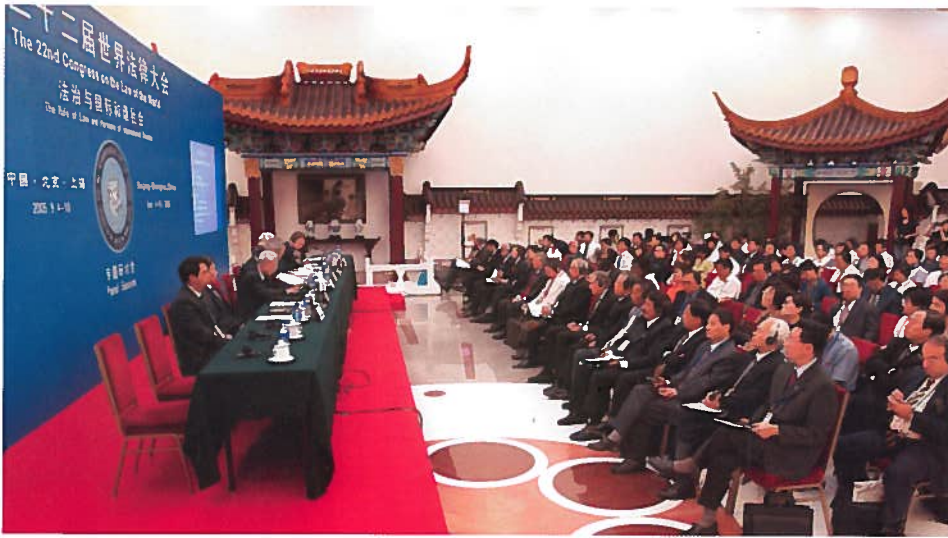
Prof. Gao Mingxuan of the Renmin University Law School (China) then spoke on the role of international law in maintaining international order. He also noted the role of national law in the formulation and development of international law.

The Hon. Liu Daqun, International Criminal Court for the Former Yugoslavia, discussed the development and work of his tribunal. During the court's history, it has indicted many parties, investigated many charges, and promoted and greatly increased international humanitarianism.

Discussing the growing number of female prisoners, Martin Meltzer, City Attorney of Wilmington, Delaware (USA), noted the need for greater consideration for this population in the penal system. Many women experience significant mental and physical abuse in prison, and countries must enforce and protect human rights for women who are incarcerated.

Zhang Zhihui, President of the Procuratorial Theory Research Institute





(China), spoke on the issue of corruption as an international crime. Corruption runs rampant in all aspects of society, including the bribery of public officials, and international cooperation is essential to combat this growing problem.

The final speaker was Yung Hoon Sung of the Gangneung Prosecutor's Office, Gangneung City (Republic of Korea). He addressed the development of the Korean criminal justice system, noting its origins and similarities to most existing common law systems around the world.

ADR: Commercial Arbitration and Conciliation

The panel was chaired by WJA President Ronald M. Greenberg, Of Counsel, Berkes Crane Robinson & Seal, LLP (USA) and co-chaired by Tang Houzhi, Honorary Vice Director of the China International Economics and Trade Arbitration Association (China).

Peter Malanczuk (The Netherlands), Dean and Chair Professor at City University of Hong Kong School of Law, highlighted some of the differences between arbitration in mainland China and in Hong Kong. Professor Malanczuk noted that, even following enactment of China's 1994 arbitration law, the distinction between domestic and "foreign-related" arbitration is not always clear. This distinction has a number of practical consequences, including as regards evidence and the roles of courts. Hong Kong, by contrast, which has enacted the

UNCITRAL Model Law, provides greater clarity on this issue. Professor Malanczuk also discussed CIETAC's efforts to take more of the domestic arbitration market, as well as competition facing CIETAC from the 172 arbitration bodies in China that administer international arbitrations.

Shen Sibao, Professor and Dean of the Law School of the University of International Economics and Trade (China), spoke about foreign-related arbitration in China. Professor Shen noted that the critical relationship between courts and arbitral tribunals, including as regards judicial supervision and assistance, has undergone significant change in recent years. China, he noted, has not followed the worldwide trend toward less judicial control of, and greater judicial assistance to, arbitral tribunals. Professor Shen discussed the judicial review of arbitration agreements in China, judicial assistance to arbitral tribunals, and the judicial supervision of arbitral awards. Following that, Professor Shen proposed that China: (1) revise its 1994 arbitration statute to reflect contemporary needs; (2) establish ideological clarity regarding "commercial arbitration"; (3) avoid excessive judicialization of arbitration; and (4) provide new requirements for foreign-related arbitration, borrowing from states with more progressive laws.

Philip Yang, Chairman of the Hong Kong International Arbitration Centre (Hong Kong), principally discussed developments in Hong Kong arbitration

post 1997. He noted that arbitration in Hong Kong, despite some initial concerns, is gaining strength. First, there is growing number and strength of expertise and professionals, both locally and from abroad. Second, the legal environment in support (and supervision) of international arbitration in Hong Kong remains sound. Finally, China is increasingly committed to the rule of law, which is a good sign for Hong Kong. Mr. Yang also highlighted five limits to the development of arbitration in mainland China. First, China faces a language barrier, as most international contracts are in English. Second, Chinese law mandates institutional arbitration, foreclosing ad hoc arbitration. Third, courts and arbitration tribunals need to better understand their mutually supportive roles. Fourth, mainland China still lacks much of the relevant expertise and logistical support to attract international arbitration. Finally, cultural differences in China make it difficult for foreigners to navigate the system.

Dr. Ann Brady, Barrister Mediator of Rougemont Chambers in Exeter (United Kingdom), spoke on the topic of ADR developments in the European Union. Dr. Brady noted that, following the publication of the European Commission's Green Paper on ADR in civil and commercial law in 2002, EU Member States are being asked to consider a recent proposal on certain aspects of the ADR process of mediation. She then highlighted some developments



currently taking place in Europe as regards ADR, discussed the proposed Directive, as well as the developments taking place in the UK. Dr. Brady concluded by noting that, with the expansion of mediation services across Europe, the public has the right to expect quality services from both mediation providers, and the proposed Directive takes the first tentative steps toward ensuring that right.

Professor Huang Jin, Vice-President of Wuhan University (China), discussed sports-related arbitration in China. Professor Huang noted that sport has become a global business, with the concomitant need for speedy and effective resolution of sports-related disputes, which fall into two general categories: commercial disputes (which are and should be confidential), and technical disputes involving involving players and referees (which generally are, and should be, open to the public, which has a keen interest in such disputes). Professor Huang then spoke about the Court of Arbitration of Sports, for which he is a judge. He noted that, to be effective, dispute-resolution for sport must be fair, free, and fast. In many instances, players' acceptance of arbitration of sports-related disputes is a condition of eligibility.

Dr. John Barkat, who teaches at the Center for Cooperation and Conflict University at Columbia University, in New York (USA), addressed the topic of "Mediation as Justice: The Evolving



International Role of Mediation and Organizational Ombudsman Program as Effective Dispute Resolution for Business Industry." Dr. Barkat noted that mediation is both effective and underutilized. Dr. Barkat identified four critical elements to influencing the perception of procedural fairness: (1) having a voice and a forum to participate; (2) the perception of an impartial and objective decision maker; (3) the perception of trustworthiness, and (4) the perception the participants have been treated with dignity and respect. He then discussed mediation, which he defined as an informal means by which a neutral third party allows both disputants to share their case, listens carefully, and facilitates respectful discussion and dialogue so that the parties are together

able to come to resolution about the dispute at hand. Dr. Barkat discussed the effectiveness of mediation, citing examples in the United Kingdom, France, Brazil, India, Japan, and Nigeria.

He concluded by highlighting the successful use of ombudsmen in applying ADR and mediation in corporate and organizational settings and the reasons for that success: neutrality, confidentiality, and independence.

Professor Wang Gongyi, Deputy Director of the Justice Research Institute at the Ministry of Justice (China), discussed the importance of the "people's mediation centers" in settling social disputes in China. Professor Wang noted that mediation is an integral part of Chinese culture and Confucianism; it helps cultivate public participation in civic affairs, promotes democracy, and resolves disputes in an inexpensive and non-adversarial manner. Today, there are some 900,000 people's mediation centers in China, with 8 million staff members, 6 million cases annually (twice as many cases as Chinese lower courts handle), and a 3,000-year history.

Professor Wang noted three important principles of people's mediation: reliance on social/moral principles, voluntarism, and non-exclusivity (i.e., mediation does not preclude access to courts). In addition, people's mediation is free of charge to participants, as industry associations pay the necessary fees. He noted that disputes



include those between natural persons, between natural persons and legal persons (such as organizations or corporations), and between legal persons. A variety of disputes may be mediated, from traffic disputes to insurance claims. Professor Wang noted that the Government sponsors and supports people's mediation, but does not dominate the process. The mediators are chosen by the people themselves and include retired lawyers, judges, and other qualified people. More recently a jury system has been introduced. Finally, people's mediation is effective, as it is legally binding on the parties.

The panel's Co-Chair, Mr. Tang, then made a few observations. First, if the goal is greater harmony in society, then mediation is preferable to arbitration, which is adversarial. Second, to be more effective, mediation results should be legally enforceable. Third, the future belongs to mediation, not to arbitration.

The Chair, Mr. Greenberg, then concluded with a few observations about his work paper on the enforceability of agreements for expanded judicial review of international arbitral awards. Mr. Greenberg noted that parties are free to provide, by contract, appellate review of arbitral decisions, if they wish to and can afford to do so. Courts, by contrast, might or might not enforce parties' agreements for heightened judicial review. Parties need to sort these issues out in their contracts, before disputes arise.

Three other work papers were distributed to the participants. Dr. Gao Fei, Legal Counsel at CIETAC (China), submitted a paper entitled "Ten Years of Development of Domestic Arbitration and Conciliation in China." Franklin Hoet Linares, Honorary President of the World Jurist Association (Venezuela), submitted a paper entitled "Mediation, Alternative Justice, and Much More...." Finally, Jerome A. Cohen, Professor of Law at New York University School of Law (United States), submitted a paper entitled "Should Foreign Investors Settle Disputes at China's Local Arbitration Commission?"

International Investment and Transnational Corporation Law

During the International Investment and Transnational Corporation Law panel speakers from six countries addressed issues regarding the protection of foreign investment, transnational purchasing and non-performing loans, and transnational bankruptcy. The speakers offered insight into the laws within their own countries and explored the question posed by the chairs, Lucio Ghia, Studio Legale Ghia, WJA Honorary President (Italy) and Wang Chuanli, Professor, International Law College of China, University of Political Science and Law (China) – Is the market the guardian or is there a need for international law in this field? The chairs noted that market economics and the law are two different cultures, and the role of international

law on international investment and transnational corporations must take this into account.

Professor Wang Weiguo, University of Political Science and Law (China) spoke on "Legal Settings for Trans-national Purchasing of Nonperforming Loans." He examined the emerging field of nonperforming loans as an attractive investment for foreigners in China and raised the question of what impact foreign acquisition of nonperforming loans will have on the Chinese economy as these shareholders become creditors.

Nohyoung Park a professor at the University of Korea, School of Law (Republic of Korea) raised the question of foreign investment in a different context — that of national security. He reviewed the recent developments in the CNOOC-UNOCAL failed deal.

The Hon. Sixto Marella, Executive Judge, Makati Regional Trial Court (Philippines) turned the focus of the discussion to bankruptcy law and called for the creation of a uniform transnational insolvency law. He noted the correlation between certain national insolvency laws and the depth of economic depressions when problems arise. A unified international law to address these issues, in light of growing international investments, would provide protections for the citizens within the country as well as for the investor.

Yu Jinsong: Professor, Law School of Renmin University (China) looked at bankruptcy law issues from the Chinese perspective.



Andreas Wilhelm, P&P Pöllath & Partners (Germany) discussed the property and investment issues that arise when countries or regions are (re)unified. In this instance he used East & West Germany as a case study.

Finally, providing a US perspective to the panel, Arnold Quittner, Pachulski Stang Ziehl Young Jones & Weintraub (USA) explained the basics of American transnational bankruptcy law, offering insight into the legal provisions under US law.

Due Process and Rational Allocation of Judicial Resources

The Chairman of the panel, Klaus Decker, Counsel at the World Bank (Germany), welcomed the participants and introduced the Co-Chairman, He Jiahong, Professor at the Law School of Renmin University (China).

Justice Qin Zheng-an, President of Beijing High People's Court (China), discussed Chinese efforts to improve the allocation of judicial resources in China. Justice Qin noted that the Chinese judicial system is overloaded. There has been a five-fold increase in case law in recent years, while the number of judges has actually decreased. Judges also have too many tasks, with too little administrative assistance from clerks. In addition, judges' professional qualifications are lacking. Judges, he argued, need to follow principles of fairness and efficiency, as too much attention has been paid to substantive justice at the cost of procedural justice.



Better procedures, Justice Qin noted, can reduce costs and improve efficiency while making the process fairer to the parties.

Justice Sam Hou Fai, President of the Court of Final Appeal for the Macao Special Administrative Region provided an overview of the appeal system for civil proceedings in the Macao Special Administrative Region, including the jurisdiction of courts, civil appeal system, and types of statutory appeals, conditions for appeals, effects of appeals, appeals for review, and appeals for the unification of jurisprudence. Justice Sam's thorough presentation prompted a series of interventions and questions from the floor.

The Chair then turned the microphone over to Professor Chen Guangzhong, China University of Political Science and Law (China), who

spoke about norms and values of criminal procedure and justice. Professor Cheng began by discussing standards of criminal justice in China, which follows United Nations principles, including the presumption of innocence, equality under the law, special protections for minors, the rights to counsel, the right to appeal, and rights against arbitrary arrest, extortion, double jeopardy, and torture. Professor Cheng noted the gap between China's goals and its practice. He argued that China must improve substantive and procedural justice, improve impartiality, and ensure that litigants perceive that they are being treated fairly and equitably.

Professor Long Zong-zhi, President of the Southwest University of Political Science and Law (China), then discussed the "Process of the Justification of Chinese Criminal Proceedings." Professor Long provided a retrospective look at criminal procedures in China. He then discussed progress and lingering problems in Chinese criminal procedure. Professor Long noted that the 1996 enactment of the PRC's Decree on Amending the Criminal Procedure Law marked great changes in criminal procedure in China. Nevertheless, globalization, a market-oriented economy, and the needs of social justice compel further systemic improvements. Professor Long concluded that China's criminal procedure will, in the future, conform to international



standards and fundamental human rights. Because of China's special conditions and judicial conditions, the process of reform definitely will contain Chinese characteristics.

The Chair, Mr. Decker, noted that the title of the panel—due process and the rational allocation of judicial resources—suggested a tension between due process or quality considerations on the one hand and rational allocation of judicial resources or efficiency considerations on the other hand. He argued, however, that the quality-versus-efficiency debate is a bit artificial and may obscure key factors leading to both low quality of services and misallocation of resources, including corruption and “capture” of the system by an elite of

technocratic approach is unlikely to improve.

Legal Education and Continuing Legal Education in the New Century

The Legal Education and Continuing Legal Education Panel was chaired by Zeng Xianyi, Honorary Dean of Renmin University's School of Law (China). The chairman presented brief opening remarks on the importance of legal education in developing a sound legal and judicial system.

The first speaker of the panel was Kwang-Jun Tsche, Professor at Kunghee University's School of Law (Republic of Korea). He spoke on the evolution of Korean law schools, including educational reform and problems with the existing system of legal education. The country is looking at changing its current system, which has no academic prerequisites for taking a bar exam, allowing too many candidates to sit for the exam. The goal is to change the concept of the lawyer in the country to something more indicative of the importance of legal ethics and standards. Rick Baltzersen, President of the WJA's World Business Associates (USA), then spoke on technologies available to courts and legal entities to deal with a court's internal and external services, including document availability.

The panel's co-chairman, The Hon. Clifford Wallace of the Ninth Circuit Court of Appeals (USA), then presented his vision for the establishment of better

judicial education worldwide. Judge Wallace expressed that any global judicial education effort should supplement, not replace, existing national systems. A global effort would enable judges to share ideas and resources across borders, encouraging model educational systems and a better judiciary in the world.

Dr. Shlomo Levin, President of the International Organization for Judicial Training (Israel), echoed Judge Wallace's sentiments wholeheartedly, highlighting his organization's efforts and programs to improve judicial training and make more resources available to provide enhanced learning opportunities for judges around the world.

International Environmental Law, Resources, and Energy Law

The International Environment Law, Resources and Energy Law Panel was chaired by Ma Junju, Professor of Law School, Tsinghua University (China) and co-chaired by Joseph Dellapenna, Professor of Law, Villanova University (USA). The speakers examined the progress made to protect the environment, and health and natural resources during the past decade. Specifically they looked at the Chinese agenda, the Helsinki Rules, the theory behind environmental regulation, the role of the judiciary and the need for an open door policy with regards to energy resources.

Wang Xi, Professor, Director of Academy of Environmental Law, Vice



public sector institutions in general and the justice sector in particular. These not only decrease the quality of justice (because of discriminatory practices and limited access to justice) but also impede efficiency (because resources are misallocated and used for non-justice-enhancing purposes). Mr. Decker concluded that reform projects for improving the management of the justice sector must be seen in the context of the political economy and underlying societal problems that affect the quality of judicial services as well as the allocation of judicial resources. Overcoming corruption in and capture of the justice system, he concluded, is an inevitable challenge, to which a purely



Chair of China Environmental Law Academy (China) presented a paper on the experiences in China since the Rio Summit. The Professor noted that China was one of the first countries to implement the Agenda 21 and examined how China has done in meeting these goals.

Professor Dellapenna discussed the milestones in international water law including the recent efforts to revise the Helsinki Rules and other existing UN Conventions. The new Berlin Rules, approved by the International Law Association at Berlin, in 2004, provide a "comprehensive, cogent and complete summary of all customary international law regarding water management decisions."

Providing context to the discussions of the other speakers, Professor Cai Shoyqiu, Wuhan University, Chair of China Environmental Law Academy (China) presented a paper on "Regulation Theory: A Legal Theory for Human Relations with Nature." He asked the threshold questions — should law regulate human relations with nature, can it and, if so, how? Through his examination he concluded that an integrated and targeted approach is necessary and should be used to regulate this critical relationship.

Moving from an academic to a judicial focus, Lu Zhongmei, Professor and Vice President, Hubei High People's Court (China) addressed the issue of "Ecological Safety in Judicial Practice." He noted the injuries to both people and to property caused by

environmental torts and emphasized the need to make recovery more feasible and incorporate "biological security" into the Chinese law.

Finally, Wang Mingyuan, Professor, Law School, Tsinghua University (China) discussed a new and emerging subject at law schools in China — energy, resources and the environment. He encouraged a sharing of knowledge, including Chinese need to look to other countries for models on successful regulation to address industrial pollution, greenhouse gasses, and other concerns raised by the increased consumption and demand for energy.

TUESDAY, SEPTEMBER 6

Public Health Crises and Health Law

The Public Health Crises and Health Law Panel, which was chaired by Roger Nowadzky, City Attorney, Marshalltown, Iowa (USA) and co-chaired by Li Honggui, Vice Chair of the China Health Law Society (China) was organized by the International Municipal Lawyers Association. The focus of the panel's papers and presentations concerned health and safety catastrophic emergency management and preparedness. The principles and issues had equal applicability to man-made as well as natural catastrophes. The range of incidences discussed included Avian Flu to SARS to catastrophic fires to flooding, tsunamis, earthquakes, chemical industrial accidents, and AIDS. While the speakers acknowledged that each disaster

is unique, even among category disasters, there are some aspects that appear to be universal. To this end, the speakers represented various regions of the world held common observations and acknowledged that public health safety emergencies in the world are inevitable. What is uncertain is the occurrence will happen and the form of disaster it will take.

It was acknowledged that such a global crisis such as AIDS/HIV, SARS and Avian Flu spread past national boundaries and in regard, measures taken to prevent and manage these problems could be more effective by coordination beyond national boundaries. Also while a crisis may appear to be new and novel, the officials responding to the catastrophe and the related issues, problems and solutions have been addressed by others of whom are lawyers representing local municipal governments. It was acknowledged by the panel that the key to managing and coordinating this global crisis is that the knowledge and expertise of lawyers from all countries of the world and the cooperation of officials and government lawyers responsible for a disaster response.

A number of speakers on the panel pointed out that in a disaster response there becomes a tension between the rights of individuals and the rights of society to respond to the crisis. Examples of this are mandatory evacuation and quarantine measures. The panel concluded that collecting a direct flow of disaster information and legal expertise from an organization, such as the World Association of Public Health Lawyers, and perhaps the creation of an ongoing subgroup with a function acting as a collection point and platform for dialogue on disaster and public health and safety issues would be desirable.

The speakers on this panel included Wu Chongqi, Researcher and Vice Chair, China Health Law Society (CHINA), who spoke on "Legislation on Public Health and AIDS." Elizabeth Gibson, Law Lecturer, Marquette University, Wisconsin (USA) whose paper was titled, "Fire Disasters: Safety and Liability Violations and the Fatalities that Result." Jin Dapeng, Director, Beijing P



Health Bureau (China) addressed “Public Crisis & Creation of Legal Systems Based on the Appearance of an Emergency.” Avian Flu and “Preparing for Disaster Situation” was discussed by Charles W. Thompson, Jr. County Attorney, Montgomery County, Maryland (USA). And Gao Feng (China) discussed “Protecting Public Health, Constructing a Harmonious Society.”

International Cooperation on Anticorruption

The panel was chaired by Benjamin Griffith, an attorney in Mississippi (USA), and co-chaired by Professor Chu Huaizhi, Peking University Law School (China).

Professor Ma Kechang, Wuhan University Law School (China), spoke on the role of international cooperation in fighting corruption. Professor Ma noted that fighting corruption is increasingly important, as China transitions from planned to a socialist-market economy, but that China faces a long, arduous campaign to eradicate corruption. He noted that some 4,000 Chinese had fled China and that some RND5 billion in illicit funds have been taken out of China. Professor Ma discussed legislative initiatives in China regarding anti-corruption. Professor Ma then discussed China’s efforts to crack down on corruption through international cooperation, including judicial assis-

tance, extradition, cooperation with international police organizations, and adherence to international regimes such as the United Nations Convention Against Corruption, which China has signed and will soon ratify.

The next speaker was Dr. Richard Blum (USA). Dr. Blum argued that there is no satisfactory definition of “corruption.” He noted that corruption is endemic because it “works;” in too many places it is the norm, not the exception. Corruption among politicians and judges, he argued, is most pernicious. Dr. Blum commended the United Nations effort to fight corruption, but argued that the harder tasks remain. He argued that controlling corruption is not a

matter of law or lawyers, but of the supportive, facilitating presence of economic and political development. Dr. Blum invited the participants to examine Transparency International’s list of the most and least corrupt countries.

Suo Weidong, Prosecutor General of Jilin High People’s Court (China), then discussed international anti-corruption efforts. Mr. Suo noted that corruption has become of great concern to many states, as corruption crimes become more complex and the criminals become better organized and more international. It is urgent, then, to strengthen cooperation in cracking down on multinational crime in the face of porous borders. Mr. Suo analyzed, in economic, political, social terms, the value of and demand for strengthening international cooperation in anti-corruption. He noted eliminating corruption and building honest governments are now among states’ most important goals. He also described the state of international cooperation in anti-corruption and provided some detailed suggestions to further strengthen international efforts to fight corruption, including improving communication across cultures.

The Chairman then turned the microphone over to Keith Henderson (USA), President and senior advisor on anti-corruption and the rule of law to IFES, an international non-profit group. Mr. Henderson argued that the



best way to develop a rule of law culture is to wrap reform around a tool such as the United Nations Convention Against Corruption. The greatest difficulty, he argued, is trying to get governments to accept that there is no more important goal than promoting the rule of law. Crime, corruption, and economic underdevelopment all are problems stemming from the absence of the rule of law. Government officials, however, offer fail to see the linkages. He offered some perspectives from his work in Afghanistan and Vietnam, where he helped develop an action plan to promote anti-corruption. He noted that international cooperation is the key to implementing an anti-corruption regime. The UN Convention Against Corruption is a good blueprint, but states must prioritize its goals and implement its provisions. States need leadership at the governmental and non-governmental levels. Mr. Henderson concluded by noting that judicial integrity, public trust, and access to information are essential to successfully implementing anti-corruption strategies and creating a rule of law culture.

The final speaker was Wang Jianming, Director of the Anti-Corruption Bureau of the Supreme People's Procuratorate (China), who discussed strengthening international cooperation in fighting corruption. Mr. Wang noted that transnational corruption, which is a cancer in human society, remains rampant. He highlighted the increasing difficulty of coping with new forms of



crime, which can over-burden states' existing legal mechanisms. China, he noted, has undergone fundamental changes and has made remarkable progress in anti-corruption. Since 2000, China has prosecuted more than 200,000 corruption and bribery cases. China also has joined more than 100 multilateral conventions for combating international crime. Mr. Wang offered five recommendations regarding international cooperation on anti-corruption. First, states must perceive a heightened sense of urgency in fighting international crime. Second, foundational work — including establishing and disseminating crime data — must be stepped up. Third, cooperative mechanisms for mutual confidence must be increased. Fourth, multi-channel, multi-form international cooperation mechanisms must be explored. Finally, measures should be taken to reinforce the United

Nations' Convention Against Corruption, to promote a global cooperative mechanism to fight transnational corruption.

Intellectual Property Law

The panel was chaired by Jiang Zhipei, Chief Judge of the No. 3 Civil Trial Division of the Supreme People's Court (China). He introduced the topic and turned the floor over to Wu Handong, Professor of Zhongnan University of Economics and Law (China). The speaker covered three important issues. One, there needs to be harmonization between intellectual property and legislation. Two, intellectual property agreements need international protection and enforcement. Three, intellectual property will be shaped by traditional concepts and values.

Joseph Straus, President of the Max Planck Institute on Intellectual Property (Germany), spoke on the issue of TRIPS and global compliance, as well as the role of TRIPS+ and TRIPS — in the arena of intellectual property worldwide, including how these agreements have shaped the development of countries such as China.

Jo Sung Lee followed with a discussion of intellectual property rights. It was noted that information can fall under intellectual property, and knowledge can be considered information. Since knowledge is of a public nature, it is hard to characterize the rights afforded to it under intellectual property doctrines.

Legal counsel of the World Intellectual Property Organization, Edward Kwa Kwa (Switzerland), spoke next on the increasing role of non-governmental organization in intellectual property. Additionally, he spoke on the challenges in developing intellectual property standards that can be enforced globally.

Lu Guoqiang, Senior Judge of the No. 2 Intermediate People's Court of Shanghai (China), followed with a discussion on intellectual property disputes. He noted that disputes are often related to trademarks, but the growing nature of the Internet has



spawned new conflicts as they relate to domain names.

The next speaker was Paul Liu, Director of the Intellectual Property Research Institute of Taiwan Chengchi University, who spoke on piracy. Specifically, he discussed his work in analyzing and developing a “reasonable” rate of piracy in certain countries and measures that are needed to reach that rate.

Ho Im, an attorney with Hanmi International Law Office (Republic of Korea), spoke on the intellectual property issues concerning stem cell research in Korea. Of particular note was the role of religious groups and the United Nations’ views on the issue and how it is affecting the research’s continuance.



Guo Shoukang of Renmin University’s School of Law (China) and Franklin Hoet Linares, WJA Past President (Venezuela) also participated in the panel discussion.

United Nations: Its Role, Function, and Reform

Ambassador Jin Yongjian, President of the United Nations Association of China and former Vice-Secretary General of the United Nations (China) chaired the panel. Lord Wolfe, Chief Justice of England and Wales (United Kingdom) served as co-chair.

Ambassador Jin made introductory remarks, noting some of the United Nations’ accomplishments over the past sixty years. He argued that the UN



Charter has laid a solid foundation for, and remains the cornerstone of, global peace. He remarked that the UN has had glorious achievements and regrettable failures. Too often, though, people forget its many accomplishments, including in the areas of peace, sustainable development, decolonization, AIDS prevention, arms control and non-proliferation, and environmental protection. Ambassador Jin noted that the UN faces severe constraints: it is not a global government, has no army, and has a budget that is less than New York state’s education budget. The UN can do only what the members want it to do. The UN, he argued, is not perfect, but is irreplaceable. Although UN reform is inevitable, Ambassador Jin argued that the goals should be increased efficiency and efficacy.

Dr. Karl-Georg Zierlein, WJA Special Representative to the United Nations (Germany), argued that the United Nations is an indispensable part of the present world system. Only the UN, he argued, has the capacity to deal with transnational problems, including the exploration of space, global pollution control, exploitation of the seas, struggles against poverty, emergency measures during global epidemics, and anti-terrorism. Dr. Zierlein found it remarkable that the United Nations has survived sixty years, given its enormous challenges, including vote-blocking by states and the failure to pay contributions. During times of crisis and reform, however, it is

important to remember why the United Nations has survived, and to take stock of its accomplishments. Dr. Zierlein then identified four areas for reform: (1) administration and organization; (2) the structure of the organization (e.g., expanding the Security Council); (3) institutional reforms; and (4) constitutional and cognitive reforms.

The next speaker was Professor Liang Xi, Wuhan University School of Law (China), who spoke on the “United Nations at a Crossroads.” Professor Liang argued that UN reform must be undertaken. At its 60th anniversary, the organization — and international order — are in danger. International society is far from harmonious, contrary to the goals of the UN. He argued that the mission of the United Nations is





different today from what it was at its inception, and it must change to remain relevant. Reform, he argued, should follow four fundamental principles. First, peace, security, and social development should be prioritized, as development is pre-requisite to lasting peace and stability. Second, the UN should strive toward equitable geographic distribution, to remedy the current problem of under-representation of African and Latin American states. Third, the Charters' purposes and principles should guide the members in reforming the Security Council. (If financial contributions dictate, the less-developed countries will continue to be under-represented.) Fourth, members must bear in mind the practical goals of reform and strive for greater efficiency.

The Chairman then turned the microphone over to Wu Miaofa, Researcher at the Institute of International Studies at the Chinese Ministry of Foreign Affairs and Council Member of the United Nations Association (China). Mr. Wu titled his discussion "The World Calls for a Strong United Nations: In Memory of the 60th Anniversary of the UN." Mr. Wu noted that the establishment was one of the great undertakings of the 20th century, citing several of its major achievements. Mr. Wu then noted four challenges to a strong, effective, and viable United Nations: (1) tremendous and complex changes internationally; (2) unilateralism by certain states; (3) a widening gap between rich and poor states; and (4) overlapping entities within the UN and an inefficient staff. Mr. Wu also noted that his work paper discussed six models for expanding the Security Council.

The next speaker was Wan Meng, Dean of the Department of Law at Beijing Foreign Studies University (China), who spoke on the reform of the United Nations and the development of developing countries. Dean Wan noted that, although the UN has played the role of preserving peace for 60 years, new, complex, and fast-changing problems have brought about unprecedented hazards and challenges, making reform urgent. He argued that a reformed United Nations would profoundly impact all states in the world, but

especially the 49 least-developed states. These states' populations, comprising one-fourth of the world, continue to live in extreme poverty.

Dean Wan then provided a short history of the United Nations in the context of the development of developing states. He then discussed the concept of development of the United Nations and development of developing countries. Dean Wan concluded by discussing five priorities for reform. First, developing countries should immediately formulate their integrated national strategies for development to realize the Millennium Development Goals and the international community should lend strong support to efforts to strengthen the technological and productive capacity of developing countries. Second, while rendering international assistance, developed countries should take full account of the specific situation in receiving countries. Third, states should establish an open, multilateral trading mechanism on an equitable basis, abolishing agricultural subsidies and reducing of non-tariff barriers. Fourth, developed countries should take further debt relief measures and increase international aid. Fifth, cooperation between public and private sectors should be strengthened to mobilize more resources to participate in economic development and poverty reduction.

The Chair then turned the microphone over to Daniel Monaco, WJA Past President (USA), who discussed "Permanent Peace: How to Proceed?" Mr. Monaco discussed the proposal for a citizens' world court as an alternative or supplement to UN Charter reform. Mr. Monaco provided a historical perspective of the proposal. Mr. Monaco described the proposed court as international in scope and independent of governments. The proposed court would attempt to adjudicate major issues affecting international life by seeking out and collecting evidence and by applying it to the law, but with a moral emphasis. Mr. Monaco then fleshed out the concept and philosophy behind the proposed court, which is to issue decisions on the basis of the universal principle of equity. A successful





court, he concluded, would foment democracy, thereby assuring the acceptance of the court's decisions by states.

Lord Woolf provided a few summary observations. He noted that all of the panelists agreed that the United Nations was essential, and that it should continue. No one argued that the basic structure of the United Nations was wrong, although some argued that the membership of the Security Council should be changed—which is hardly surprising, given the changes in the United Nations' membership over the past sixty years. The United Nations, he argued, could be seen as a victim of its own success, as the organization is being judged today without attention to what the organization has achieved. Every institution, however, must examine itself critically to improve efficiency and efficacy. Lord Woolf argued that, unsurprisingly, states cannot agree on the form of reform. Lord Woolf then opened the debate to the audience.

**Law and Technology:
Growing Challenges in
Internet and Medicine**

The panel was organized by the People's Court Press (China). Wang Yunsheng, the Chief Editor of the Organizer, first introduced the panelists and presented remarks on the mutual influence

between law and technology. Lionel Amsellem (France), chaired the panel, presented brief introductory remarks on the importance of technology, and the need for existing laws and regulations to adapt to the technology that exists, rather than the opposite approach of forcing technology to adapt to existing law.

Dr. Wei Yanliang, Assistant Director of the Strategy Research Center of the State Intellectual Property Office (China), then spoke on the issue of bio-patents. He noted that bio-patents are important because they generate significant revenue, although the significant

number of patent applications and increasing patent-related litigation are both causes for concern.

Joseph Van Eaton, an attorney with Miller & Van Eaton (USA), spoke on the potential for the Internet to change the practice of medicine at many levels. However, there are still issues of security, privacy rights, and user's preferences to balance. There are also issues of network availability and its potential effects on the practice of medicine and access to care. These issues all raise the possibility of legal challenges.

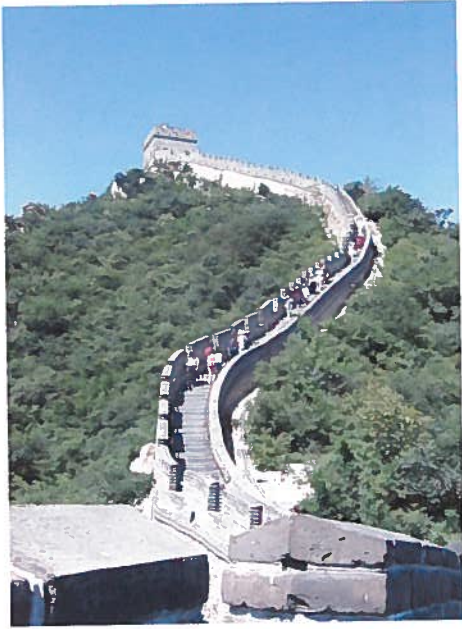
China University of Political Science and Law Professor Zhang Chu spoke on the rapid growth of the Internet in China. Paralleling this growth is China's effort to develop regulations and laws impacting the Internet and the services it provides.

The final speaker on the panel was Ma Minhu, a professor at Xi'an Jiaotong University (China). The panelist addressed the increasing number of challenges the Internet poses for existing laws in China. Security is important and needs protection, particularly given the "international" nature of the Internet.

Judiciary and the Media

While the specific protections or restrictions for the media may vary country to country, the speakers on the panel "Judiciary and the Media" were able to transcend jurisdictional bound-





daries and discuss the interaction between the media and the judiciary and the critical role access to information has in ensuring the Rule of Law. Chair, Yang Runshi, Director and Chief Editor, People's Court Daily, Supreme People's Court (China), and Co-Chair, The Hon. Deon van Zyl, Judge, Court of Appeals, and WJA President for Africa (South Africa) presided over a distinguished panel that began with the premise that "the public wants to know that justice is being done and being seen to be done." The topics covered included lawsuits against the media, freedom and access to information, judicial independence from the media, the media as a supervisor of the judiciary, and the media's responsibility to the public.

Zhang Ximing: Researcher, Media Research Institute of the Chinese Academy of Social Science (China) began the discussion by offering information on the recent momentum in China to increase the freedom of the media while also protecting the interests of citizens and groups. This began with reforms in the civil code in the last 1980s which allowed for libel, defamation, and privacy infringement actions.

Tracing the history of what is known in the United States as Freedom of Information laws, Patricia Lynch, City Attorney, Reno, Nevada (USA), found precedent in historical Chinese law. Ms.

Lynch looked at the evolution of laws around the world seeking to ensure the public's access to information by and from the government. She concluded noting that currently, in China, the National Agenda through 2007 includes local level laws to encourage freedom of information.

Jing Hanchao, Vice President of High People's Court, Hebei Province (China), focused his discussion on the judiciary's right to act without intervention from the mass media and called for a balance between the media's right to express opinion and the need to respect the particular features of the judiciary. He argued that objective reporting by the media is useful and beneficial to a society, but that the media must exercise self-discipline in order to protect the function of the judiciary.

Continuing the discussion of the possible influence the mass media may have on the judiciary, Liu Bin, Professor, China University of Political Science and Law (China) noted that the media's role as a supervisor of the judiciary is an important one, but in order to protect the Rule of Law we must also take into account what powers control the media and the possible vulnerability of the judiciary to mass media.

Finally, a unique perspective was offered by Lei Xiaolu (China), who is the Chief Editor of the only newspaper in China specialized on legal news reporting, Legal Daily. As a member of the media, he acknowledged the need for

a balance and also emphasized the need to have both a strong and dynamic media as well as a strong judiciary, both insulated from outside interests.

Demonstration Trial International Airborne Pollution

As always, the Demonstration Trial, held this year in the Great Hall of the People, was a highlight event for the Congress. Sitting as the International Court of Justice, seven chief justices from around the world comprised the bench to hear the Case of International Airborne Pollution. The Honorable Lord Woolf, Lord Chief Justice of England and Wales (retired) served as Chief Justice for the Mock Court. The Honorable Mario Mangaze, Chief Justice, Supreme Court of Mozambique; The Honorable Mohammed L. Uwais, President, Supreme Court of Nigerai; The Honorable Gunter Hirsch, President, Supreme Court of Germany; Mr. Liu Daqun, Judge of the International Criminal Tribunal for the Former Yugoslavia; The Honorable Hilario G. Davide, Jr., Chief Justice, Supreme Court of the Philippines; and The Honorable Iftikhar Muhammad Chaudhry, Chief Justice, Supreme Court of Pakistan served as justices.

The demonstration began with a reading of the fact pattern by Garry Hunter, WJA General Counsel & Law Director, Athens, Ohio (USA). Mr. Hunter served as the Chairman for the trial. The Opening Statements were made

第二十二届世界法律大会


The 22nd Congress on the Law of the World

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The Rule of Law and Harmony of International Society


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by Audrey Z. Chen (China), who argued on behalf of Delta (the country claiming it was damaged by airborne pollution); Kevin Ying-yue Song (China), who argued on behalf of Alpha (the country causing the airborne pollution), and by Ronald M. Greenberg (USA), who argued on behalf of Beta (the country which had a contract with Alpha for being provided energy by Alpha).

Attorney Chen urged the court to issue an injunction to stop Alpha, a country located thousands of miles away



from Delta, from using pulverized coal power plants to produce electricity. Delta had completed extensive investigations, according to the stipulated facts, finding that emissions from Alpha's production plants had contaminated the environment in Alpha, Beta and in Delta. During her opening statement, Ms. Chen argued that the court had jurisdiction to issue such an injunction because of principles established in the Trail Smelter Case (1937, US-Canada). This early case established the principle that activity in one country, that produced harm in another, could lead to liability. Ms. Chen also sighted the International Court of Justice [ICJ]'s decision in the Corfu Channel Case, (1949, United Kingdom – Northern Ireland/Albania) and the Stockholm Declaration, (1972 UN Conference on the Environment) which provides that State have the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or areas beyond the limits of national jurisdiction. Professor Ved Nanda (USA), serving as co-counsel for Delta, further clarified his client's position by emphasizing that a provisional measure, requiring a reduction of emissions, but falling short of an actual injunction would not cure the damage being caused to Delta. Both counsel addressed several questions raised

by the justices, many of which focused on the fact that Delta, which during its own economic development had done significant damage to the environment, was now trying to restrict countries such as Alpha, seeking its own development, and Beta, dependent on Alpha's production of cheap electricity.

Mr. Song, defending Alpha in this matter, during his opening statement argued that the ICJ in fact did not have jurisdiction to issue an injunction. He relied upon The Nuclear Test Cases (1973, 1974, Australia – France, New Zealand – France) in which ultimately the ICJ found that absent a particularized harm to the State bringing suit, the court did not have jurisdiction. He also stressed the importance of the electricity being generated to the livelihood of both Alpha and Beta, for whom Alpha's production was the only source of electricity. Mr. Song noted that these underdeveloped nations did not have the luxury of alternative fuel methods and this burden should be weighed in determining the applicability of an injunction.

Mr. Greenberg, arguing as solo counsel on behalf of Beta, furthered this argument noting that Beta had a vital interest in the dispute between Delta and Alpha. He began by reminding the court that Delta does not have "clean hands" after years of their own pollution. Delta's contribution to their own pollution



should mitigate the usefulness of the Trail Smelter Case. In fact, Mr. Greenberg argued, the principle Delta sited from Trail Smelter was more dicta than binding precedent for this court. Finally Mr. Greenberg argued that if the court issued an injunction it should also provide that the ICJ's decision is not force de jure and therefore the contract between Alpha and Beta, to provide electricity should remain enforceable.

Rebuttal arguments were made by Professor Nanda on behalf of Delta, Mr. Kenneth Chow Charn-Ki (Hong Kong, China) on behalf of Alpha, and Mr. Greenberg on behalf of Beta.

After deliberating for approximately 30 minutes, the justices issued an unanimous decision. Lord Woolf read the decision of the court, beginning first with the side note that the court was appreciative of the exceptional arguments and presentation by Attorney Chen. Noting that Trail Smelter required the ICJ to strike a balance between two nations, the court sited the imbalance between the developed and wealthy nation of Delta and the undeveloped, poorer nations of Alpha and Beta. The court concluded that there were diplomatic solutions that could be sought and this court should only serve as a last resort. To that extent, the court held that Delta is in a position to assist Alpha and Beta and should do so in order to achieve Delta's own objectives. The court outlined specific actions which both Alpha and Delta should take to



negotiate a program to reduce the pollution by 10% year over the next 10 years. If these negotiations should fail then the parties were free to return to this court for further redress.

THURSDAY, SEPTEMBER 8

Shanghai Opening Session

The Shanghai portion of the Twenty-Second Congress on the Law of the World opened with a warm welcome by Mr. Han Zheng, Mayor of Shanghai. The Mayor congratulated the delegates on their work in Beijing and welcomed them to Shanghai. He noted tremendous accomplishments in Shanghai, economically and in furthering the Rule of Law, and

wished the delegates well as they continued their work in such a venue.

Law, Rule of Law, and the Court

One of the most anticipated panel sessions of the 22nd Biennial Congress began with The Honorable Beverley McLachlin, Chief Justice of Canada and chairperson of the panel, introducing the panelists and presenting one of the major themes for this session, the evaluation of the role of courts in maintaining the rule of law. She stressed that without integrity, the "rule of law" is little more than a phrase without support.

The first speaker was the Chief Justice of the Supreme People's Court of China, The Hon. Xiao Yang. The Chief Justice addressed the development of the legal system in China and the role of the courts. He highlighted some of the major developments in the movement towards the rule of law in his country. Additionally, the Chief Justice noted the importance of the rule of law in China's development of a socialist society.

The Hon. J.J. Spigelman, Chief Justice of New South Wales (Australia) was the next to speak. His discussion centered on the importance of judicial review serving as the "integrity" branch of government. The judiciary plays an essential role in checking and balancing the other governmental organs.



The subsequent speaker was The Hon. Kim Pyong Ryul, President of the Supreme Court of the Democratic People's Republic of Korea. The Chief Justice discussed the importance of the rule of law in international society, as well as the development of the judicial and legal systems in the DPRK.

The Hon. Guy Canivet, President of the Supreme Court of France, was the next to speak. He addressed several important issues regarding the role of the courts, particularly in France. The Chief Justice described the role of judges as one of implementing law. He discussed this theme in the context of a multi-national environment, a key issue given the responsibility of the French courts to implement and apply the laws of the European Union.

The President of the Supreme Court of Russia, The Hon. Vijacheslav Lebedev, addressed the issue of transparency in the judicial system. Creating an open and accessible judicial system is essential to give the courts and the judiciary credibility as a venue where citizens' issues can be resolved.

The final speaker was The Hon. Clifford Wallace, speaking on behalf of The Hon. Anthony Kennedy, Associate Justice of the Supreme Court of the United States. Justice Kennedy returned to the United States to attend the funeral of Chief Justice William Rehnquist. His



presentation discussed the importance of judicial independence in creating a fair, impartial, equitable, and credible judiciary.

One of the lasting messages from the panel was that to preserve the rule of law, courts must be accessible and available, citizens must understand their judicial systems, and must be independent. Additionally, the judicial system must be open to changing circumstances in the world.

FRIDAY, SEPTEMBER 9

Municipal Governments and Civic Participation

The role of municipal governments in the Rule of Law, and in particular their

ability to utilize and motivate civic participation is central to fostering peace and harmony. The International Municipal Lawyers Associated organized the Municipal Governments & Civic Participation panel, which was chaired by Xie Sheng Wu, President and Professor Shanghai Jiaotong University (China) and co-chaired by Patricia Lynch, City Attorney, Reno, Nevada (USA). Beginning with the distinction between indirect and direct participation, the panel chose to focus on direct participation by the citizens. The speakers covered a range of topics, including reform measures to enhance public access to information, transparency in government, obligations on the part of citizens to act with integrity and to remain active, the balance between public participation and government's ability to act efficiently, as well as the delivery of services.

Specifically, Xu Qiang, Director of Legal Office, Shanghai Municipality (China) discussed the many recent efforts of the Shanghai government to facilitate open government and increase public participation. He remarked that while these reforms are new, they are already seeing the benefits. The Shanghai government seeks to accomplish three goals with their reform measures: (1) definite regulatory powers and behavior, (2) transform the functions of government bodies, and (3) reform that administration of the government. In all of this public access to information is being seen as a key to their success.





Providing a perspective from Korea, Ju Yong Lee, Vice Governor for Public Affairs, Gyeongnam Province (Korea) discussed a recent survey done of the public officials in Korea, which revealed an overall positive impression of civic participation in government. He particularly noted the use of the internet to enhance the ability and effectiveness of such participation.

Ye Bifeng Vice Chair of China Administrative Law Society, Professor of



Shanghai Jiaotong University (China) spoke on the topic of “a positive comparison on the coordinating obligation of the participants on the administrative procedure.” He noted that in China public participation is both a right and obligation and then focused his discussion on the obligations — the obligation to act and the obligation to do so with integrity.

From the United States, Steve Meyers, Meyers, Nave, Riback, Silver & Wilson (USA) examined open meeting laws and their context in the discussion on Rule of Law. He discussed the importance of these laws, including why it was essential that the public have access and not just rely on the media to monitor their government. He also looked at comparison to the US and European Union models.

The President of the Hunan High People’s Court (China), Jiang Bixin added an additional element to the discussion on public participation, namely the advantages and disadvantages. While advocating for the continued reform of the administrative laws, to encourage public participation, he also noted the difficulties that arise and urged lawmakers to address these in new legislation.

Finally, Robert J. Alfton, Miller-O’Brien, P.L.L.P. (USA) took the question of civic participation one step further by looking at the delivery of

services and how public participation interplays with the critical services a local government must provide. He discussed what important questions lawyers must ask themselves in determining what services can be provided and how to provide them. He also noted the role of public participation in contracting/outsourcing, a mechanism often used to deliver municipal services.

Maritime Law

The panel was introduced by co-chairman Si Yuzhuo, Professor at Dalian Maritime University (China). He discussed the evolution of maritime law and its importance in the global world that exists.

The co-chairman turned the floor over to Zheng Zhaofang, Senior Judge at the Shanghai Maritime Court (China). The judge spoke on the development of Chinese maritime law. Chinese maritime law drew its inspiration from international practices. The judge further described how many maritime disputes revolve around the carriage of goods, and some of the legal intricacies of how disputes are settled.

The following speaker was Hu Zhengliang, Professor at Shanghai Maritime University (China). The theme of the presentation was carrier liability. This is a big issue in maritime law, and resolution to problems should draw upon lessons learned from practice and theory. It was suggested that all related laws should strive to reduce costs imposed on business while increasing security of goods. Additionally, legal development in this field should aim to reduce disputes.

William Eaton, an attorney with Korona, Beides & Eaton (USA), followed with a discussion of the relationship between maritime law and the Kyoto Protocol. As the ocean is a good place to dispose of excess carbon dioxide prohibited under Kyoto, maritime law needs to respond to the issues related to this problem before there are significant negative effects.

The final speaker of the panel was Zhu Zengjie, Counsel of the China Maritime Law Association. The speaker



discussed the relationship between maritime legislation and actual practice, as they are not always in sync. However, the Chinese maritime code is a practical set of standards and should be better followed.

Panel chairman Jean-Serge Rohart, Chairman of the International Maritime Commission, delivered closing remarks and a summary.

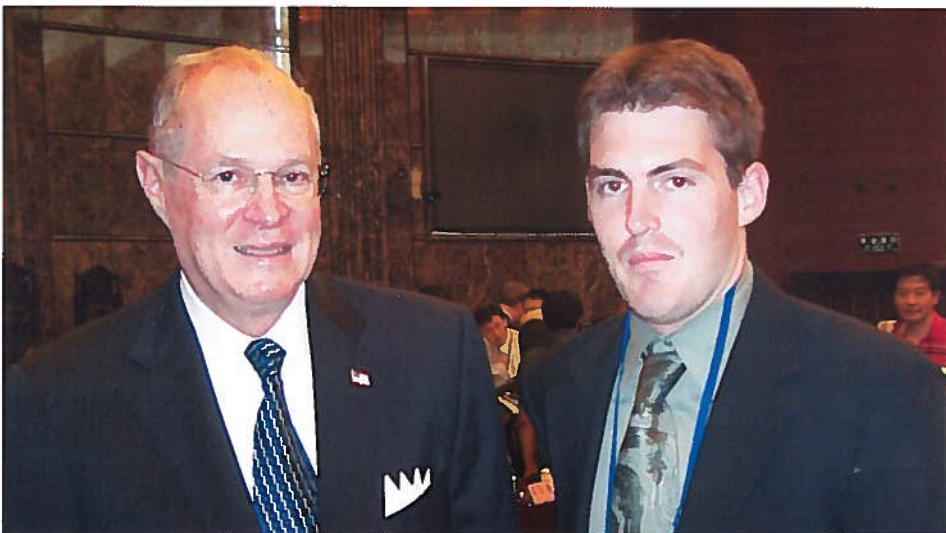
International Service Trade:Legal Service, Insurance, and Banking

The panel was chaired by Li Guoguang, Commissioner of the Law Committee of the National People's Congress and

former Vice-President of the Supreme People's Court (China), who made a few introductory remarks, noting that China's economic development cannot be separated from the world economy. He stated that China welcomes all peace-loving states to cooperate in promoting economic development and world peace. Liu Mingkang, the Chairman of the China Banking Regulatory Commission ("CBRC") (China), spoke on the topic of "Construction of the Legal Framework for Banking Regulation and Supervision in Modern China." He noted that the construction of the legal system for banking regulation and supervision in modern China is only two

decades old. During that short time, China has established a legal system for banking regulation and supervision, through legislation, administrative regulations, and department rules, with judicial interpretations supplementing the law. Chairman Liu then provided a brief overview of the CBRC and its role in developing Chinese banking laws, improving the legal environment for banking regulation and supervision, and promoting and expanding the opening up of China's banking sector through the construction of the legal system. The current system, he noted, is far from perfect. The CBRC will continue trying to strengthen its program, speed up the lawmaking process, monitor international banking practices, continue pushing banking reform, and reinforce the follow-up evaluation of rules and regulations.

The next speaker was Iris Jones, Client Services Advisor for the international law firm Akin Gump Strauss Hauer & Feld LLP in Washington, DC (USA), who also co-chaired the panel. Ms. Jones noted that lawyers are in the business of serving clients, and thus must strive to provide quality services. As such, it is important for lawyers to be active listeners and to provide clients what they actually need, not what lawyers





think they need. Lawyers must know the customs and culture of their clients in order to be effective in providing services. Lawyers, however, often are detached from their clients. Ms. Jones then discussed efforts in her law firm, through a client-services team, to transition from individualism to collaboration, which has created better results, more teamwork, and a more harmonious work environment.

The next speaker was Wu Xiaoping, Vice Chair of the China Insurance Regulatory Commission (China), who discussed the evolution of China's insurance industry. Mr. Wu first provided a brief overview of the three stages of the Chinese insurance industry, from the establishment of the China Insurance

Co., in 1949, to the suspension of insurance policies during the Cultural Revolution, and finally to the current legislative reforms, which began in 1978. He noted that the China Insurance Regulatory Commission stepped up its regulatory efforts in 1995, and a new insurance statute was enacted. More recently, the Commission promulgated new regulations, including those governing insolvency of insurance companies, premium rates, management of insurance company funds, reinsurance, and so forth. Today, he argued, the legal framework for insurance in China is quite complete. Existing legislation and regulation provide a solid foundation for the Commission's work and a healthy development of the

Chinese insurance industry. Mr. Wu noted, however, that the system still has some defects that will require fixing. First, the law operates at a relatively low level, thus compromising its enforcement. Second, new laws must be enacted to respond to new industry developments. Third, some laws are inconsistent and must be reconciled. Fourth, the technical aspects of the insurance law must be improved. Fifth, in the future, the legal system governing insurance in China should be systematically changed, to ensure efficiency and effectiveness.

The next speaker was Zhu Hongchao, Deputy Director of Shanghai Attorneys Association and Senior Partner of the Shanghai Union Law Firm





(China), who spoke about the opening of legal services in China. First, Mr. Zhu noted that, per capita, the number of lawyers in China is quite low. The number of large firms is similarly small, which impacts technical competence, specialization, and competitiveness in the current globalized economy. Mr. Zhu also discussed the conflict between profit and social justice in the Chinese socialist market system.

Human Rights: World Peace and Development

The Chairs of the Human Rights: World Peace and Development Panel, Chen Shiqiu, Vice Chair, China Society for Human Rights Studies, Expert of UN Human Rights Commission (China) and Ved Nanda, Professor at the University of Denver School of Law (USA), began this important panel reminding the delegates that human rights is no longer a fashion, and that human rights and peace are indivisible. Professor Nanda also noted the remarkable progress taking place in China. The speakers expounded further by discussing changes in the Chinese constitution, which are enhancing human rights protections; the evolution of the legal culture to make human rights

enforceable; the relationship between development goals and human rights goals; the impact of terrorism on human rights; and China as a case study for human rights and social development.

Professor Xu Xianming, President, China University of Political Science and Law (China) began the discussions with a look at the Chinese Constitution and the reforms that have focused on five key areas: rights for the public and non-public economic sectors; private property rights; expropriation; social security; and a new general provision to protect the human rights of individuals. These reforms are parts of a four-stage process — freedom & equality, survival & economic vitality, development, and finally, harmony.

Looking at the influence of culture, Liu Hainian, Director of Human Rights Research Center, Chinese Academy of Social Sciences (China) spoke about the importance of both a legal and a societal culture that will foster the enforcement of human rights. He took note of the



various legal instruments, including the UN Charter, the Declaration on Human Rights, and regional and national constitutions as being key to creating enforcement for human rights. However he also noted the impact of social culture and the importance that scholars understand its impact on the way human rights are realized in a country.

Understanding the relationship between peace, human rights and development, was the focus of Klaus Decker's presentation. Mr. Decker, Counsel, Justice Reform Practice Group, Legal Vice-Presidency, The World Bank (USA) provided unique insight into how development experts, usually the economists, and human rights experts, usually the lawyers, are approaching the questions of peace from often very different directions. He noted a convergence slowly emerging and that it is key to further the agenda of both groups.

Zhuo Zeyuan, Professor, Law Department of Central Party School (China) spoke about prerequisites that a society must realize in order to create a "human rights consciousness." Specifically he noted that there must be an awareness of the existence of the individual and an understanding of the relationship between individuals and other individuals, as well as individuals and the society. Only by embracing these elements can a culture of "rights" arise.

Terrorism, and the interplay with human rights, was the focus of the next speaker's presentation. Jiang Guoqing, Professor, China Foreign Affairs University (China) noted first that terrorism infringes on human rights — the act of terrorism, for which, he noted, there is no universally accepted definition, includes an infringement upon human rights. In his concluding remarks, he also reminded the delegates that the acts taken by a society as a result of terrorism can infringe upon human rights. The final speaker, Chang Jian, Professor of School of Administration, Nankai University (China) provided a historical look at the development of human rights in China. He noted that in China human rights are an imported concept and have developed as the society has evolved.



Professor Nanda, followed up on these remarks by closing the session with a personal note about a student he taught twenty years ago. This student, of Chinese origin, told him that “human rights” can not be translated and is not indigenous to the Chinese people. Today, noted Professor Nanda, a distinguished group of scholars, from China and studying human rights in China, are emerging as leaders in this field.

Developments and Amendments of WTO Rules

The panel was chaired by Arnold Quittner, of Pachulski Stang Ziehl Young Jones & Weintraub (USA), who made some introductory remarks about the topic, highlighting the judicialization of the WTO process, as well as some of its consequences.

The panel was co-chaired by Zeng Lingliang, Dean and Professor at the Wuhan University Law School (China), who spoke about achievements and challenges in the WTO system. Dean Zeng highlighted some of the WTO’s symbolic achievements, noting its breadth of representation and its lack of precedent as a multilateral trading system. He also noted the significance of the accession to the WTO of China and other developing states. These states, he argued, are not simply new voices, but are helping set the tone at the WTO. Dean Zeng further highlighted some of the innovations in the WTO’s dispute settlement mechanism. He noted that the legal framework of the multilateral trade system is taking shape, and the rule

of law is prevailing in trade disputes. Dean Zheng then discussed some outstanding issues involving the WTO, suggesting reasons for its compromised efficiency, the erosion of the common principle of MFN, the negative effect of RTAs, and preferential treatment. Finally, Dean Zeng suggested a number of ways to improve the WTO. In conclusion, he argued that “the WTO is a superstar in a long march.”

The next speaker was Yu Minyou, Dean of the WTO College at Wuhan University (China), who spoke on “Negotiations on the DSU Reform and China’s Policy Towards DSU Reform.” Dean Yu noted that WTO members continue to review the Understanding on Rules and Procedures Governing the Settlement of Disputes (“DSU”) following the 5th Ministerial Conference in Cancun. Dean Yu noted the achievements of the WTO’s dispute settlement mechanism, as well as five major problems with the system, including the need for increased efficiency, improvements in the dispute settlement body, improvements in the adjudication process, improved execution of decisions, and improved legal aid. Dean Yu discussed various proposals from WTO members for improving the DSU, statistics on WTO dispute-settlement



cases, and the judicial interpretation of the Panels and Appellate Body since 1995. He concluded with suggestions for China concerning improvement of the WTO dispute settlement mechanism during the Doha Round.

The Chair then turned the microphone over to Professor Zhang Naigen, Fudan University Law School (China), who spoke on the development and improvement of general rules of treaty interpretation as regards the WTO, drawing on principles from the Vienna Convention on the Law of Treaties and the jurisprudence of the International Court of Justice. Professor Zhang cited a number of general rules of interpretation for the WTO, such as the principles of general application, effective interpretation, the interpretation of words based on their normal, dictionary meanings, the use of language in context, and reference to the object and purpose of the underlying treaties. Professor Zhang also cited a number of special rules, including Article 17.6 of the Anti-Dumping Agreement, which states that Panels should interpret ambiguous provisions in conformity with customary international law.

The final speaker was Yang Guohua, Director of the Legal Division at the Ministry of Commerce (China), who first spoke about China’s involvement in the DSU over the past two years. Mr. Yang noted that China has been both a claimant and respondent in several WTO cases. He then provided an overall evaluation of the DSU, and touched on some of the major topics relating to the DSU. Mr. Yang concluded that the dispute-settlement process is working reasonably well. The members, therefore, should not demand an overhaul of the system. He noted that the WTO has resolved some 30 cases over the past few years — in contrast to the ICJ, which resolved around 50 cases over the past 50 years. Mr. Yang concluded that all members have an interest in voluntarily complying with WTO decisions, not simply to protect their reputations in the international community, but because they might benefit from the ruling in a future case.

Securities Law: Illegal Stock Exchange and Info Disclosure

The final panel of the Congress was introduced by co-chairman Gui Minjie, Vice-Chairman of the China Securities Regulatory Commission. He introduced the topic and its importance in China, which as a developing market economy must closely monitor its securities markets.

The co-chairman then introduced the first speaker, Gu Gongyun, Professor at East China University for Political Science and Law (China). He discussed the development of capital markets in China vis-à-vis an analysis of the law-making environment in the country. He addressed the need for a sound legal framework to serve as a foundation for a sound capital market.

Session chairman Robert Dory, President of American Governmental Financial Services Company (USA), was the next to speak. His discussion addressed the role of securities markets in helping to finance and develop a system of clean drinking water in China.

Zhou Zhengqing, former Chairman of the China Securities Regulatory Commission, then spoke on the legislative role in preventing illegal trading practices. He noted the importance of creating an environment that supports appropriate information disclosure as part of the development and improvement of capital markets. Investors' rights need protection as well.

The following speaker was Song Xiaoming, Chief Judge of the No. 2 Civil Trial Division of the Supreme People's Court (China). The Chief Judge addressed China's securities law and legal liability for violations of that law. Tort liability under the law was discussed, although the judge conceded that there are some weaknesses and shortcomings in the law that should be addressed.

The final speaker was Wang Chao, Director of Legal Affairs of the China Securities Regulatory Commission. He examined his commission's role in enforcing securities regulations. He described the process of addressing infractions, starting with a look at what



types of cases are investigated, how they are investigated, and measures that are taken to prevent illegal activities. Lastly, the speaker addressed challenges that exist in the securities market and potential methods to address those challenges.

Closing Ceremony

The Closing Ceremonies of the Twenty-Second Biennial Congress on the Law of the World began with a reading of the Shanghai Declaration. Professor Nanda, who had presided over the Congress and Program Chair, and Mr. Huang Jiahua proffered the Shanghai Declaration and the Resolutions of the Congress, both of which were approved by acclamation.

World Jurist Association President Valeriy Yevdokymov then presented an award to Hu Jintao, President of China and Leader of the Communist Party for his efforts to further the Rule of Law and world peace. Additional awards were presented to Chief Justice of China Xiao Yang and Justice Wan E'Xiang, Vice-President of the Supreme People's Court of China.

Xiao Yang, President of the Supreme People's Court and Chair of the Host Committee, expressed thanks to the World Jurist Association and presented a gift to the organization. The gift, a replica of an ancient bronze well which

was discovered only recently has a 150 word inscription that is 2800 years old. The inscription has been determined to be the earliest verdict handed down in China.

In his concluding remarks, Chief Justice Xiao Yang noted the collaborative manner in which the WJA and the Chinese Host Committee worked together to plan for the Congress. He noted that the Congress had brought together delegates from many diverse backgrounds all driven by a shared mission and congratulated the delegations on their exemplary work in furthering the Rule of Law. He expressed hope that China's commitment to the Rule of Law, which was demonstrated throughout this Congress and recognized by the WJA, would continue to shine throughout the world.

The Closing Ceremony concluded with the announcement of the new WJA Board of Governors and the passing of the gavel from Mr. Yevdokymov to Ronald M. Greenberg, Of Counsel, Berkes Crane Robinson & Seal (USA). Mr. Greenberg, thanked Mr. Yevdokymov for his dedication and support of the WJA. He then outlined a future for the WJA, and assured the delegates that his objective was to work closely with them, to encourage them to become involved, and to build upon the success of the Congress.

Mark your calendars for the next WJA Conference!

Terrorism and the Rule of Law

May 22-24, 2006

Edinburgh, Scotland

History and Evolution of Terrorism

Defining Terrorism

Acts Constituting Terrorism

Impact of Terrorism on Social Order
and Government Decision Making

Fighting Terrorism and Preserving Civil Liberties

Making Terrorism Insurance Viable

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