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**BULLETIN OF THE WORLD JURIST ASSOCIATION  
OF THE WORLD PEACE THROUGH LAW CENTER**

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## ***TWENTY-FIRST BIENNIAL CONGRESS ACHIEVES GREAT SUCCESS***

***SYDNEY/ADELAIDE, AUSTRALIA  
AUGUST 17-23, 2003***

The Twenty-first Biennial Congress on the Law of the World was a riveting success. Participants from almost 40 countries joined in Sydney and Adelaide, Australia to discuss the most pressing legal issues of our time.

As always, the World Jurist Association received acknowledgment from numerous Heads of State who decided to write letters in support of the WJA and its goal of Peace through the Rule of Law. Countries represented included Argentina, Australia, Bangladesh, Canada, China, Czech Republic, England, Ethiopia, Fiji, France, Germany, Hong Kong, Italy, Ivory Coast, Japan, Jordan, Korea, Macao, Malaysia, Mauritius, Mexico, Namibia, Nigeria, Norway, Pakistan, Philippines, Poland, South Africa, Tanzania, Ukraine, United States, Uzbekistan, and Zimbabwe. Distinguished experts and leaders from these countries highlighted the strength of the Twenty-first Biennial Congress on the Law of the World and contributed to its overall achievement.

The goal of this Biennial Congress was to explore those issues that have been prevalent throughout the 40 years the WJA has been working towards world peace through the Rule of Law. In addition, Congress organizers sought to add new and timely legal issues to the program that would set the stage for future WJA events. The combination of these goals resulted in a breadth of panel sessions including Human-



*Prof. Dr. Hans Thümmel, Opening Ceremony*

Rights, Alternative Dispute Resolution, Environmental Law, Terrorism and the Law, Local Government, and Emerging Trends in Law and Policy. In addition to the informative panel sessions, delegates enjoyed numerous cultural events and evening receptions.

As with all WJA Congresses, the program enables participants to talk on a more personal level throughout the duration of the conference, encouraging and strengthening ties between individual and country relationships. It is this type of activity that sets the WJA apart from other organizations.

Enclosed, readers will find the complete Congress report detailing all panel sessions and special receptions along with memorable photographs of the event. We invite all of you to read and consider each of the reports and reflect on this year's important contributions.

For all those who attended the Twenty-first Biennial Congress, thank you for your continued support and participation. Recent times demonstrate the imperative need for continued work by members of the WJA and for those who could not join us, we look forward to your attendance at our next Conference in Rome Italy.

**WELCOME ADDRESS**



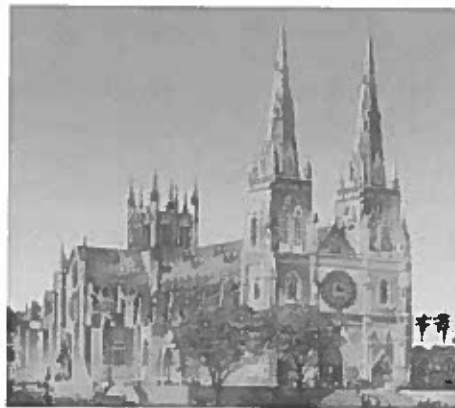
I am honored to come before you as the newly elected President of the World Jurist Association. This is an incredible opportunity to express sincere gratitude to all of my colleagues for having placed your trust in me. As a lawyer who represents the people of Ukraine, and now the members of the WJA, I want you to know that democracy and the principles of law and justice stand at the forefront of my ideals. It is with pride and a sense of responsibility that I accept the Presidency of the WJA.

The controversial and alarming events of today's world urgently demand lawyers of all nations to untie and move forward with constructive initiatives. That is why we actively seek Peace through the Rule of Law while understanding that it is nearly impossible to resolve these pivotal issues within a single given country or on a local level. I am proud to see participation in the WJA has reached such extensive levels and I know that by working closely together, we can resolve many of the difficult issues ahead.

I fully realized the responsibility when I decided to place my name on the ballot. At the same time, I presume that my experience as a lawyer, Head of the Union of Lawyers of Ukraine, politician, and involved member of the WJA will serve the goals and needs of our association. I also see a pressing future need to expand the membership of the WJA to central and Eastern European individuals. However, maintaining and strengthening our ties to more established countries already represented in the WJA will be no less important. I would like to extend a heartfelt thanks to my predecessor, Prof. Dr. Hans Thümmel, for his wisdom, energy, and previous example. I am also very grateful to Margaret Henneberry, who has become a shining symbol of the WJA. I cannot imagine the life of the WJA without her devotion, guidance and sacrifice.

In conclusion, I would like to note the importance of our Congresses and meetings as it applies to the useful implementation of the Rule of Law. I hope you will all continue with this rich tradition that has endured for 40 years.

Valerij Yevdokimov



**WORLD LAW CELEBRATION**

The Dean of St. Mary's Cathedral **Monsignor Tony Doherty**, in Sydney, Australia warmly welcomed the World Jurist Association's delegation noting that this was a remarkable event where representatives from every part of the world had come together to invest in work for peace. He expressed the pleasure of the Cathedral in hosting this celebration of song, story, and prayer in the furtherance of the Rule of Law.

The Monsignor provided a short history of the Cathedral, stating that the church has stood in the old part of the city and the building, along with its parishioners have grown and evolved as the country developed from a penal colony into an independent democratic nation, it's history has also been shaped by time and by the Rule of Law.

In keeping with the traditions of the World Jurist Association, speakers from the five major religions of the world were called upon to discuss the unique relationship between law and religion and the importance of the Rule of Law.

The first speaker was **Venerable Mahindra** speaking as a representative of the Buddhist faith. Mahindra explained that Buddhism teaches one how to live in peace with oneself and how to live in harmony with others. These two tenets are taught through the application of both mundane and supermundane laws. Buddhism establishes eight paths to peace, including everything from thoughts to actions, from speech to concentration. Mahindra concluded by noting that it is important to remember that, "What may be legal may not be moral and what may be moral may not be legal."

The Muslim faith was represented by **Chief Justice Sheikh Riaz Ahmed** from

the Supreme Court of Pakistan. Justice Ahmed began by noting that God sends prophets for the well being of humankind. Muslims believe that they will be judged based on upon how they relate to God but also how they interact with their fellow man.

The Justice noted that in fact all religions require man to control jealousy, greed, and hatred, and those who are violating these principles not only violate the laws but also frustrate the goals and purposes of the religions.

**Rabbi Selwyn Franklin** represented the Jewish faith. He eloquently described the Bible's story of the first court session. According to the Jewish beliefs, Moses assumed the role of jurist and "on the morrow" sat to judge the people. Scholars have suggested that the "morrow" is that particular moment the day after the Day of Atonement. Atonement is the process by which humanity and God reconcile. The Rabbi explained that the after atonement for judgment is important because it reminds us that justice must be tempered by reconciliation and peace. Only by searching for and working towards this balance will we reach peace, concluded Rabbi Franklin.

The Hindu faith was represented by **Professor Ved Nanda**, WJA Honorary President, and Director of the International Legal Studies Program at the University of Denver School of Law. Professor Nanda began with a renowned prayer of the Hindus, "Om Shanti Om," which is a calling for peace. Professor Nanda then explained the three tenets of the Hindu faith: (1) the world is made up of one human family and grief and joy are shared by all; (2) an affirmation that all paths will lead to divinity and we must not simply tolerate but celebrate our diversity; and (3) a calling for peace for all beings. Professor Nanda concluded by noting that as far back as the ancient scriptures of the Hindu religion, written in the Rag Vedas, there is a calling for global peace.

As the final speaker, Monsignor Doherty noted that unless we talk and listen to one another we will not bring peace among the religions, and without this there will not be peace in the world. He then concluded by providing examples of the things that he is thankful for, those who taught him to love, those who taught him to hope, and those who taught him to believe.

## OPENING CEREMONY

The World Jurist Association's Twenty-First Biennial Congress of the Law of the World was opened by **Prof. Dr. Hans Thümmel**, WJA President. He began by welcoming delegates from nearly 40 countries. He noted that several letters from Heads of State and Government had been received in anticipation of the work of this Congress, including one from Botswana, which Prof. Dr. Thümmel read to the Congress. The WJA President reminded delegations of the myriad of opportunities for education, discussion, and the building of friendship while they participated in the various events scheduled at the Congress. Prof. Dr. Thümmel emphasised the pressing need for continued work by the members of the WJA. He concluded by noting that his term as President of the World Jurist Association has been rewarding and he has enjoyed the privilege of presiding over conferences in Madrid, Spain, and Stuttgart, Germany while in office.



**General Michael Jeffrey**, honored the WJA by delivering the key note address to the Congress. His Excellency expressed his and his wife Marlene's delight to participate at the event, which brings together so many from all parts of the world, so early in his new role as Governor General. General Jeffrey began by expressing condolences for the recent passing of the WJA's founder and life president, **Mr. Charles S. Rhyne**.

General Jeffrey noted that he is not a lawyer, but rather a soldier, and yet the role of law has been important throughout his career. He explained that even in war, the Rule of Law is important. In instances where the military or political leaders forget these principles, mistreatments occur.

General Jeffrey discussed terrorism and noted the WJA's Resolution denouncing all forms of terrorism passed in the immediate aftermath of the September 11th attacks. Despite the on-going efforts to combat terrorism, these actions still continue. The challenge is to advance peace through the Rule of Law. The Governor General called upon high spiritual leaders to come together to communicate with their



followers. He also called for the various nations to learn to act as a global community, noting in particular the successful cooperation of Australian and Indonesian police forces to investigate terrorist attacks in Jakarta. He noted the successful capture

ensuring that the institutions of law put into place are such that the citizens can feel, think, and believe in them.



of Hambali and the cooperation of the United States and Thai forces working together to effectuate arrests.

The Governor General concluded that history shows us a forward movement of civil justice, with challenges and bumps such as these along the way. We must remember that written documents mean little without a tangible Rule of Law. Institutions meant to promote and foster peace can only operate if they spring from the interests and respond to the needs of the people they represent. The Governor General concluded by urging delegates to work towards



WJA Third Vice President and National President of Australia **Professor David Flint**, began by first congratulating and noting the distinguished career of the Governor General and his wife's many contributions to public service. Professor Flint quoted Lord Acton as a reminder that "power tends to corrupt, and absolute power corrupts absolutely." He thanked the Governor General for raising the awareness of the need to both seek to ensure people believe in the institutions established to serve and protect them and also act to curb terrorism and other threats to the Rule of Law.

Opening Ceremonies were concluded by Prof. Dr. Thümmel who further expressed the sorrow upon the death of Mr. Charles S. Rhyne, and noted that his spirit will always lead the activities of the World Jurist Association which he founded 40 years ago.

## TERRORISM AND THE LAW

The Panel Chair, *Prof. Ved Nanda* opened the session with homage to *Charles Rhyne*, the founder of the WJA. Prof. Nanda reflected on the early years of the WJA when he attended the conference and presented his first work paper in 1965. He stated that Mr. Rhyne was a man of great courage and action and that despite his recent passing he would not be forgotten. He said that Mr. Rhyne's work creating and overseeing the WJA brought the association and its primary objective of supporting the Rule of Law as the basis for international relations to the forefront of the marketplace of ideas. He called upon the delegates to rise for a moment of silent prayer.

*Prof. Tadeus Kozluk* from Poland was the first speaker to address the delegates. He spoke about three kinds of terror including psychological terror, political terror, and legal terror and noted one common aspect to all terror definitions: The use of violence as a mode of extracting gains. After studying over 100 definitions, Prof. Kozluk concluded that any definition of terror must include three major dimensions: the predetermined use of violence or threat of such on a large scale,



the possession of a clearly defined aim, be it political, ideological, religious or other, and a purposeful targeting of civilians. He said that for an act to be deemed as terrorist, it must meet all three criteria.

Lastly, Prof. Kozluk considered the fine balance between human rights and security. He critiqued the US's tightening of security measures as having a negative effect on human rights. He used the example of the US immigration policy and the detention of Al-Quaida prisoners in Guantanamo Bay to support his argument.

*Mr. Byung-Doo Jung* from the Korean Ministry of Justice opened his remarks with a recognition that the September 11, 2001 terror attacks in the United States made clear that we all now face terror in our everyday lives and that counter terror measures are imperative. Mr. Jung presented his paper which provided an overview of the legislative measures taken by major countries to effectively fight against terrorism. He also examined how efforts towards safeguarding society may conflict with the guarantee of human rights.

Mr. Jung noted that despite heated debate concerning the concept of terrorism, a clear definition has not yet been codified. The difficulty in deriving a universal concept derives from different ideologies and values. He explained that laws against terrorism have not yet been enacted in Korea. Acts of terror are punished according to Korean criminal law, The National Security Act, and other special laws against violent crimes. However, a draft proposal for an act to prevent terrorism is currently being considered.

In order to explain how terror and laws against it are affecting African nations, *the Hon. Chief Justice M.L. Uwais* from Nigeria took the podium. He said that terror in Africa has not been as prevalent as elsewhere, but that the problem is growing. He said many of the groups promoting acts of terror might have been referred to by some as freedom fighters in the past, but that this is no longer the case. Justice Uwais illustrated his point with examples: The attack orchestrated by the Muslim Brotherhood killing German tourists in Egypt, the bombing of US embassies in African nations, and the attacks in Morocco, just to name a few.

He noted that during the Apartheid years in South Africa, the actions undertaken to fight against the Apartheid government might have been considered acts of terror at the time they were committed, but that this is no longer the case today. Justice Uwais closed his remarks stating that the line between protecting civil populations against acts of terror and protecting their human rights is a fine one. He urged that delegates work to find the right balance.



Prof. Ved Nanda then took the podium. He stated that it is very difficult to combat terror with the law when there lacks a common definition. He did note however, following the September 11th attacks, the UN acted quickly to condemn the event and approved a resolution submitted by the French ambassador stating that such acts pose a threat to international peace and security. The UN also supported the US efforts to combat terrorism by authorizing the US to intervene in Afghanistan when the Taliban regime refused to give up the terrorists residing within its territory.

Prof. Nanda stated that perhaps the most significant development in the international fight against terror was the UN Security Council's adoption of Resolution 1373 on September 28, 2001. In this resolution, the Security Council stressed its determination to prevent acts of terrorism and called for all "States to work together urgently to prevent and suppress terrorist acts," "to prevent and suppress the financing of terrorism," and to "find ways of intensifying and accelerating the exchange of information".

Despite the inability of the international community to agree on a definition of terror, Prof. Nanda noted several successes including the 1997 Convention for the Suppression of Terrorist Bombings and the 1999 Convention for the Suppression of the Financing of Terrorism. Prof. Nanda closed with a list of elements that should be included in a definition of terrorism and that any new treaty should take into consideration such as backing controls, extradition, information gathering, domestic criminalization and the freezing or forfeiture of the proceeds of such crimes.

## INTERNATIONAL CRIMINAL LAW

The International Criminal Law Panel covered two major topics: Concerns over criminals and cross border restrictions; and the International Criminal Court. It was chaired by **Garry E. Hunter**, Director of Law, Athens, Ohio and First Vice President of the International Municipal Lawyers Association (USA), **Professor Samuel Jay Levine**, professor of law and partner in the law firm of McHale and Levine (USA), focused on the most perilous of crimes, including trans-national and organized crime, drug-trafficking, and terrorism. Mr. Levine premised his paper on the thesis that most states are only marginally able to address the growing problem of using cross-border restrictions to prevent criminals' migration while not stifling the benefits of international migration.

Mr. Levine also described the several treaties and bodies created by the UN as a demonstration of the increased recognition of the problems posed by international criminality. Mr. Levine proposed a solution to the problem of criminals and cross-border restrictions in the International Organization for Migration, stating that members states must share intelligence willingly and openly. Additional member states must standardize the issuance and coding of passports and create a data bank of known or perceived criminals. Mr. Levine concluded by reminding the attendees that failure to properly address cross-border migration and criminal control will result in stifling insecurity and lead to unnecessary xenophobia.

Mr. Garry Hunter then provided a brief summary of the purpose, structure, and jurisdiction of the International Criminal Court (ICC), which came into being on July 1, 2002 after sixty nations ratified the Rome Statute. As pointed out in the presentation, the most notable countries to not ratify and deny all legal obligations under the Rome Statute are Israel and the United States of America. Mr. Hunter then summarized the structure and administration of the court. He also explained the four types of crimes over which the ICC has jurisdiction: genocide, crimes against humanity, war crimes and aggression. For the most part the statute relies on definitions for these crimes as established by previous treaty law, such as the Geneva Conventions.

The final speaker, the **Honorable Romeo J. Callejo, Sr.**, Associate Justice, Supreme Court of the Philippines, responded to the first two presentations. Justice Callejo commented on the ICC and the Philippines's reaction. He noted that the Philippines had not ratified the Statute and raised concerns such as whether or not the court would have jurisdiction to hear crimes of genocide, and noted complicated issues such as the fact that under Filipino law the courts may impose the death penalty for heinous crimes, while the ICC's maximum allowable punishment is life imprisonment.

Several questions followed these presentations, with many expressing strong support for the ICC and urging nation states to ratify the Rome Statute. Professor Nanda (USA) in particular noted his active role in drafting the Rome Statute and expressed a firm belief that the Statute provides ample safeguards and procedures to protect against abuse or use of the court to further political agendas.

### THE UNITED NATIONS, REGIONAL ORGANIZATIONS, AND OTHER LEGAL BODIES

The International Law Panel focused on the UN, its ability to function effectively in modern times, and the need for reforms to ensure the organization continues to meet the needs of the world community. The discussions began with **Andrew Gareleck**, Managing Partner, LexTech Associations (France), who chaired the panel and **Professor Mark Minenko**, University of Alberta, Canada, who argued that today very few matters can actually be considered solely domestic. He proposed that rather than continue to seek ways to redefine or expand the "threats to peace" and other exception clauses, the United Nations should recognize the essentially international jurisdiction of much State action and develop processes for immediate and effective action.

Professor Minenko relied on the documented works of **Professors Hans Kelsen** and **Hersch Lauterpacht**, as well as the more recent writings of **Professor Louis Henkin**. Specifically in the debate over human rights protections, Professor Minenko argued that: "*by trying to pigeon hole an intervention into the peace and security exception of Paragraph 2(7), scholars are perpetuating the myth that*

*human rights are essentially matters of domestic jurisdiction.*" He argued that rather, the UN and its member Parties should recognize an obligation to prevent human rights abuses and realize that actions taken for that purpose are not interventions.

**Avv. Lucio Ghia**, WJA Honorary President and distinguished private practitioner in Rome, Italy, addressed the delegation next, arguing for reform of the UN particularly in light of the growing problem of international terrorism. Mr. Ghia noted that the structure of the UN is an old one, created at a time where there were far fewer countries in the world. He also raised concerns of the costs of operating the UN and noted the importance of ensuring that all members pay their dues. In proposing areas for reform, Mr. Ghia suggested reforming certain concerns ripe for consideration: The weight and equality of votes held by member nations, the issue of veto power in the Security Council, and the time for actions and decisions.

**Professor Ved Nanda** lent his expertise and personal experience in dealing with the various UN bodies. Professor Nanda reminded the delegates that the need for reform was evident but they must realize that reform takes time and must be done in a thoughtful manner. He noted that while war and peace may be difficult to resolve in the UN, the management of world health problems, real efforts to improve the protection of women, children and the impoverished are meeting great success. The World Health Organization, the World Bank, and the many other bodies impact the every day lives of people around the world. Professor Nanda concluded with a call for a "human face" on the processes of globalization. He noted the importance for the various UN organizations and regional bodies to understand the human impact of their actions and manage globalization in a fashion that meets the needs of real individuals.

The presentations concluded with a discussion on the Security Council of the United Nations and calls for reform. Mr. Gareleck began by reminding the delegation of three pillars of the world: truth, justice and peace and that they are all interlinked. He began by looking at the Security Council's inability to provide justice in recent times. He stressed the fact that the Security Council has not been modified since 1965 and 70 new countries have joined the United Nations since then. He urged

the Security Council to increase its numbers and recognize the current misrepresentation of the world's countries citing the fact that 40% of the Security Council members are from Western Europe.

Mr. Gareleck concluded by noting that the search for justice must be conducted with the knowledge of three fundamental truths. First proposals for reform must recognize the reality of power and politics reform proposals must include incentives for the powerful, who may not be persuaded economically or militarily, to "play within the rules of any international legal structure." Second those who currently hold power must recognize that throughout history the distribution of power continues to shift it is important that these nations recognize that someday they may seek the protection of the very systems they now control and influence. Finally, cultural differences, although slowly being overcome by high-speed communication and travel - must be recognized and factored into any reform discussion. Several questions and comments were made from the floor, including a call for the WJA to urge the United Nations to hold a Charter Revision Conference.

### **RECEPTION AT MARITIME MUSEUM**

After the opening day of panel sessions in Australia, the Lord Mayor of Sydney hosted a lovely reception for World Jurist Association delegates at the Maritime Museum. The Lord Mayor greeted all attendees and gave her best wishes for a most successful Congress. The Museum was a delightful forum for a gathering and participants had the opportunity to meet and interact on a more personal level, keeping within the long tradition of the events of the WJA.

### **INTERNATIONAL TRADE**

The first speaker, *Justice Wan Exiang* from China was introduced by the *Honorable Andrew Rogers*, a former commercial judge on the court of New South Wales, Australia. Justice Wan Exiang presented his paper and his personal experiences concerning changes in international commercial arbitration since China's entry into the World Trade Organization. He discussed China's division into four different regions and specifically noted a large increase case settlement as China seeks to improve transparency and

consistency in its judicial decision-making. He focused on the following four points: Equal treatment of foreign and domestic parties to a case, increased transparency, independence of the judiciary, and consistency in the application of the law, including the law of international treaties.

Justice Wan stressed that since the implementation of various changes in China's legal system, there is no discrimination between foreign and domestic parties. He noted that there have been complaints in connection with the enforcement of arbitration cases. Finally, with regard to consistency in the application of the law, Justice Wan emphasized that international treaties enjoy a high position in terms of legal effect in China. International treaties take precedence over domestic Chinese law.

*Prof. Minenko*, a delegate from Canada, asked a question concerning the application of judicial decisions when the defendant is a corporation owned by the Peoples Liberation Army. Mr. Minenko indicated that the PLA owns tens of thousands of corporations in China and may be receiving special treatment in terms of the non-enforcement of decision against their corporations. Justice Wan responded by recognizing the difficulty of enforcing such decisions, especially when the corporations are located within military camps.

The microphone was then taken by the *Honorable Andrew Rogers* who spoke about his personal experiences and knowledge of difficult arbitration cases in the field of international trade. He specifically questioned the national interest of a country in overriding freely agreed upon arbitration agreements and the effect this may have on chilling the investment climate in that country. The *Honorable Andrew Rogers* used examples in India and Pakistan with reference to cases decided by the International Center for Settlement of International Disputes.

### **TECHNOLOGY AND INNOVATIVE INITIATIVES**

The session was chaired by *Mr. Troy Smith*, Director, Electronic Publications, American Legal Publishing (USA), who began the panel with a description of the innovative WJA Technology Initiative. The Initiative takes the WJA's mission of fostering the Rule of Law to the next step - the technology age. Mr. Smith described

four current focus areas for the project. First the program seeks to incorporate technology into existing programs and services offered by the WJA to its members. This including providing technology-specific sessions where best practices and ideas for use of modern technology can be shared amongst members.

The program also provides electronic publishing technology solutions to help members offer greater internal access to laws, regulations, court opinions and other legal documents. It also works to increase the public's access to laws, regulations, and other public information by the use of electronic communication systems. Finally the WJA Technology Initiative recognizes that fundamental to the three goals stated above is access to hardware, software, and Internet facilities to provide these to the WJA members.

Perhaps the most tangible success of this program to date is the collaborative efforts to place the Supreme Court of Nigeria's judgments and opinions on the Internet. Mr. Smith described the consultation process and the efforts to secure grants in order to facilitate this project. Mr. Smith concluded with a brief description of the software and hardware necessary to make such a project work and noted that American Legal Publishing, the Global Technology Corps, the Nigerian Supreme Court and the WJA expect to complete the project in late 2003 or early 2004.

While the WJA Technology Initiative focuses on implementing modern technology to foster the Rule of Law in nations, the second speaker, *Senior Judge Lu Guoqiang*, Vice President, Second Intermediate People's Court (China) turned the delegations' attention to the equally important topic of protection of intellectual property rights without which advances in technology and other areas would not occur. Specifically, Justice Guoqiang focused on preliminary injunctive relief and its enforcement by the Chinese courts. Upon entering the World Trade Organization (WTO), China affirmed that it would revise its intellectual property protections to meet the requirements established in the Agreement on Trade-related Aspects of Intellectual Property Rights (Trips Agreement). Recognizing that Chinese courts are still in the process of developing and improving intellectual property protections, Justice Guoqiang urged the

courts to "draw on the advanced legislative and judicial experiences of the Western countries and their successful adjudication of cases in order to steadily improve and perfect the systems in China."

### **LAND AS A PRECIOUS RESOURCE IMPLEMENTING EFFECTIVE LOCAL GOVERNMENT STRUCTURES**

#### **FORMS OF LOCAL GOVERNMENT**

The International Municipal Lawyers Association (IMLA), hosted two panels during the WJA Biennial Congress and began the first session with a look at fundamentals of local government structures. Henry W. Underhill Jr. Executive Director & General Counsel of IMLA chaired the first panel on Wednesday, August 20th and began with a look at the forms of local governance.

A short summary of the forms of local government in the United States was provided by **Herbert L Prouty**, City Attorney of the City of Denton, Texas (USA), including a look at the mayor-council form and the manager council form. Mr. Prouty also discussed the possibly unique concept of "home rule," whereby the municipality has any and all powers to legislate that are not explicitly preempted or prohibited by state or federal legislation.

Mr. Prouty concluded his presentation with a look at two case studies of efficient models of municipal government - Christchurch, New Zealand and Oakland, California, USA, finding that, at least in the United States, the most efficient form of local government appears to be the "manager/council form of government with some elements of the strong mayor form."

The second speaker, **John R. Basey, Q.C., City Solicitor**, Victoria, British Columbia (Canada) began his paper with a note that there are "63 different systems of local government" in North America. During his presentation, Mr. Basey explained the non-constitutional status of local governments in Canada and the impact this has had on Canadian municipalities. He discussed some of the reform efforts currently underway and offered these as lessons other nations should keep in mind as they either develop local government structures or seek to reform existing systems. Amongst the questions and comments

received from the floor was a note by a member of the Nigerian delegation regarding the constitutional status of local governments and suggested that in some instances this may not be desirable as it does not allow for changes or controls by the federal powers.

The next four speakers turned the delegates' attention to the issues of managing land within their regions. Daniel J. Curtin, Jr. of the Walnut Creek law offices of Bingham McCutchen (USA) began the discussion with a look at the problems of urban sprawl and the impact on the environment. Mr. Curtin noted the shift in development patterns such that populations have begun extending out beyond the "core" cities and moved into suburban living.

As citizens began seeking out the wide open spaces of "rural" suburban living, while requiring access to the amenities offered by a city, demands on transportation and other resources increased. "The results of such sprawl are population, congestion, air pollution, traffic congestion, along with loss of farmland and open space," stated Mr. Curtin. In order to address these issues, Mr. Curtin offered a description of the types of growth management programs underway in the United States and offered lessons from the experiences in the State of California.

The second speaker, **Mr. Edward J. Sullivan**, City Attorney, Tangent, Oregon and a lawyer at the firm of Garvey Schubert Barer (USA) explained the role of the comprehensive plan by local government in the United States in order to regulate land use. Using the *Golden v. Planning Board of the Town of Ramapo*, 285 N.E.2d 291(1972), *appeal dismissed*, 409 U.S. 1003 (1972), case as a jumping ground, Mr. Sullivan explained the prevalence and advisability of developing a comprehensive plan as a way to both enable land use regulation and to manage growth.

The final speaker on the topic of land use was **Mr. Steven R. Meyers**, Managing Principal at the law firm of Meyers, Nave, Riback, Silver & Wilson (USA). Mr. Meyers began with a look at the concept of separation of church and states and then examined the manner in which this concept has been challenged by the enactment of federal legislation that impinges on powers traditionally left to local governments, namely land use regulation. The

presentation included a look at both the U.S. and the European understandings of the separation of church and state.

### **FINANCING LOCAL GOVERNMENTS**

The final topic and speaker for this panel focuses on financing of local governments.

**Mr. John Gotherman**, General Counsel of the Ohio Municipal League and the Ohio Municipal Attorneys Association (USA) presented both his paper, regarding debt insurance and debt management, as well as summarizing the other side of this issue - taxation and revenue sources.

Mr. Gotherman began by acknowledging that different nations will have different structures to operate under. What was offered in this presentation were some of the factors to consider when seeking ways to finance local governments, as well as case studies on how structures in the United States are effectively managed.

### **DEVELOPMENTS AND REFORMS IN THE JUDICIARY**

Judicial Reform panel chairman, **The Honorable Chief Justice Hilario Davide Jr.** from the Philippines, opened the session with a declaration that judicial reform is critical to all democratic systems. He then introduced the first speaker, **Justice Deon van Zyl** from South Africa. Justice van Zyl described the great changes that have taken place in South Africa since the fall of Apartheid. He recalled that as a young Judge, he had sworn to defend a constitution made by whites and for whites.

With the election of Nelson Mandela in 1994, the constitution was modified in a way that allowed Justice van Zyl and all other judges to dispense justice equally for all South African citizens, no matter their color. All apartheid legislation is in the process of being overturned and pushed aside. Justice van Zyl described the new constitution, based on social justice and the protection of fundamental human rights; a change that is welcomed and proving effective in South Africa.

In South Africa, Justice van Zyl considered the greatly increased representation of blacks and women on the bench as an illustration of the changes that

have taken place. He spoke about the new constitutional court and that its leadership has been recently reorganized. In conclusion, Justice van Zyl explained that many judges in South Africa are now acting as servants to the community and that their first priority is to see that justice is done.

The next speaker, *Justice Gong Pi-Xiang* from China, presented his paper on Globalization and Chinese Judicial Reform. He noted that the many years that China lived in seclusion from the rest of the world has had a great impact on China's entry into a globalized world. He said that like all other countries of the world, the effects of Globalization have touched China and that as a result, great changes are taking place to cope with these changes. In closing, he mentioned that in its position as an emerging power, globalization affects China differently than it affects other powers.

The following speaker, *Attorney Leticia F. Tablate* from the Court of Appeals in the Philippines spoke about reform and development of judicial and legal education in the Philippines. She stated that the objectives of the reform and development process include the delivery of speedy and fair dispensation of justice to all, judicial autonomy and independence from political interference, improved access to judicial and legal services, improved quality of external outputs to the judicial process, efficient effective, and continuously improving judicial institutions, and a judiciary that conducts its business with dignity, integrity, accountability, and transparency.

Ms Tablate considered how judicial education also plays an important role in improving the system and that the establishment of a judicial academy in the Supreme Court illustrates the priority that the Philippines attaches to judicial education.

Ms Tablate also spoke about the training of court personnel so that technology could be better integrated to improve the judicial process. In conclusion, Ms Tablate noted that a continuing constraint to judicial reform has been the restricted allocation of funds necessary to implement the reforms discussed above.

The podium was then taken by *the Honorable Justice Hilario Davide Jr.* He cited various judicial reforms that have taken

place around the world and discussed how these examples could be useful in the context of the Philippines.

He noted five common elements in international judicial reform: That recognition of judicial independence is crucial, the growing use of alternative modes of dispute resolution to deal with increasing case loads, the emphasis on management in order to optimize limited resources and provide specialized expertise when needed, the education and training of judges and court employees on all levels, and the opening of the judiciary to the society.

Justice Davide summed up the elements in judicial reform by stating that all programs strive for independence, efficiency, excellence, transparency, and accountability. He also discussed the Action Program for Judicial Reform and access to justice was discussed to ensure that the most vulnerable sectors of society would have affordable and efficient means of attaining justice.

#### **ALTERNATIVE DISPUTE RESOLUTIONS**

The first panel presentation was made by *Dr. Ann Brady* from the UK. It provided an examination of recent developments in Alternative Dispute Resolution for non-family civil disputes in England and Wales. She explained that change was needed in the civil court system due to increased delays and costs of obtaining justice, increased complexity of cases, the inequality of treatment of cases, and the fact that the system is overly adversarial.

Dr. Brady described the various stages of a dispute and how ADR is being applied to each stage, including the allocation stage, case management stage, pretrial review stage. She provided examples of how recent court decisions supported the use of ADR to resolve disputes and further illustrated her point with information about government support for ADR within various government agencies.

Dr. Brady continued with an explanation of how court-based ADR or Mediation schemes are being introduced at all levels of civil courts in England and Wales. She concluded her presentation saying that the various initiatives described

above appear to indicate the beginnings of an integrated national approach to ADR based on a creative mixture of inputs from government and other organizations.

The following speaker, the **Honorable Justice John Mroso** from Tanzania, explained how ADR could provide solutions to Tanzanian judges to deal with an increasing caseload. He stated that ADR has historically been a traditional African mechanism for resolving disputes between neighbors, relatives, clans, or tribes. Only the most recalcitrant resorted to courts to resolve disputes. However, due to caseload increases in Tanzania, 1993 marked a rediscovery for ADR.

Based on advice from US advisors who visited Tanzania, the judicial system has undertaken changes to promote the use of ADR. Justice Mroso explained that the lawyers working in Tanzania initially resisted the use of ADR, as they feared this would cause them to earn less money, as cases would be decided more quickly out of court. However, this problem was overcome as they learned that appropriate application of ADR procedures would be to their advantage as they would be able to take more cases and clients would have greater confidence in their work.

The following speaker, *Alexander Belohlavek* from the Czech Republic, presented an analysis of alternative civil and commercial dispute resolution procedures within the European context. He specifically referred to those countries that are currently seeking membership in the European Union. He said that the EU distinguishes between the various types of alternative dispute resolution procedures and that in Eastern Europe, ADR has not been institutionalized so to provide from such a differentiation. He referred to various articles in the Czech law to support his point.

Mr. Belohlavek spoke about various types of mediation that have been introduced into the Czech Republic and indicated that this procedure is carried out under State supervision - the Probationary and Mediation Service. He stated that the implementation of effective ADR procedures would require the training of persons to oversee such procedures and on techniques that will allow parties to a dispute to find a settlement out of court.

*cont. on p. 13*





# THE DEMONSTRATION TRIAL

The Demonstration Trial, entitled '*Legality of preventing the development and supplying of weapons of mass destruction,*' was held in the Supreme Court of New South Wales. Sitting as the International Court of Justice, the seven member bench included:

**Chief Justice J. Spigelman**, Supreme Court New South Wales, Australia;

**Chief Justice M.L. Uwais**, Supreme Court, Nigeria;

**Chief Justice Hilario Davide**, Supreme Court, Philippines;

**Honorable Justice Mason**, President, Court of Appeals of New South Wales, Australia;

**Supreme Court Justice Olga Maria del Carmen Sanchez Cordero**, Supreme Court, Mexico;

**Chief Justice Sheikh Riaz Ahmed** Supreme Court Pakistan;

**Sir Moti Tikaram**, President, Court of Appeal, Fiji (ret.).

Chief Justice J. Spigelman, Supreme Court of New South Wales, Australia, served as President of the demonstration court. The facts of the case indicated that three parties, Alpha, Beta and Delta, had consented to the jurisdiction of the court and had submitted four questions to the court, seeking an Advisory Opinion. Delta was represented by **Garry E. Hunter**, First Vice President of the International Municipal Lawyers Association and Director of Law, Athens, Ohio, USA; Beta was represented by **Timothy Robertson**, Barrister, New South Wales, Australia, and **Ronald M. Greenberg**, Berkes, Crane, Robinson & Seal, LLP, USA, and Second Vice-President of the World Jurist Association represented Alpha during the proceedings. Professor Ved Nanda moderated the demonstration.

The facts stipulated that Alpha has embarked upon a program of developing weapons of mass destruction for the professed reason of self-defense. The proposed weapons to be developed include chemical, biological and nuclear weapons.



Beta, a neighboring country has no such weapons and is currently facing a civilian uprising. The rebels are supported by Alpha. Beta fears that Alpha may provide chemical and biological weapons to those seeking to overthrow its government. Beta has asked Delta, a powerful nation situated thousands of miles away, to intervene on Beta's behalf. The following questions were presented to the court for an advisory opinion: 1) Does Alpha have the right to develop weapons of mass destruction? 2) Does Alpha have the right to supply weapons of mass destruction to Rebels fighting Beta? 3) Does Delta have the right to conduct a unilateral preemptive strike on Alpha to destroy Alpha's ability to develop weapons of mass destruction? and 4) Does Beta have the right to ask Delta to conduct a preemptive strike on Alpha to destroy Alpha's ability to develop weapons of mass destruction?

Following opening arguments, each party presented their case to an active bench, which posed pointed and thought-provoking questions in an effort to fully develop the issues. Delta urged the court to follow its own advisory opinion issued in 1996 (*Legality of the Threat or use of Nuclear Weapons*, 8 July 1996, International Court of Justice), in which the court found "It follows. . . that the threat or use of nuclear weapons would generally be contrary to the

rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law; However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake".

Delta argued that this opinion provided adequate guidance to preclude Alpha from being allowed to produce and provide chemical, biological or nuclear weapons unless there existed the extreme circumstance wherein it was necessary for Alpha to produce these weapons for self-defense. Delta conceded that it is already in possession of weapons of mass





destruction as are about seven other nations. However, Delta argued current international law precludes nations that do not already possess weapons of mass destruction from developing and possessing such weapons today.

Delta argued that since Alpha's survival is not an issue there are no exceptions available under international law that would allow Alpha to develop such weapons today. Since Beta is an ally of Delta, Delta argued that it would have the right to unilaterally intervene if Alpha developed weapons of mass destruction that would threaten the survival of Beta.

Beta in turn urged the court that it should not simply rest on precedent, it must recognize the growing threat to world peace if the proliferation of weapons of mass destruction is allowed to continue. Beta argued that the court must follow the 1996 nuclear weapons opinion, but must also go further, finding that the decision created an anomaly by allowing the use of such weapons when national sovereignty is threatened. Nearly all wars have been fought because one party believed their survival was threatened.

Beta also noted that Alpha's actions amounted to a real threat, not simply anticipation on the part of Beta – Alpha has a history of support insurgents within Beta and therefore Beta was justified in seeking preventative action.

Finally Alpha defended its sovereign right to possess weapons that would serve to protect Alpha from invasions. Alpha argued that only by

possessing such weapons could it send a message to country's such as Delta, that Alpha was prepared and capable of defending its interests. Alpha relied on principles of self-defense and noted that the only reason Delta has threatened a preemptive strike is because it knows Alpha can not defend itself.

Furthermore, Alpha argued, any intentions to supply weapons to one party of a civil war do not violate principles of non-intervention, because there is plenty of international precedent of nations supporting civilian attempts to overthrow an erroneous government. Alpha also argued that there is no precedent for breaching national sovereignty of a nation when the country has taken no action to threaten or harm another.

Following a brief recess, the court delivered an oral advisory opinion. The President of the court began by reminding the parties that the court's jurisdiction was one of an advisory capacity. With regards to the first question, the court noted that Alpha had once been a party to treaties preventing it from being allowed to develop biological or chemical weapons, however, even though Alpha has now withdrawn from those treaties, the customary international law preventing the development of weapons of mass destruction had developed to a point that the treaties were merely codification of existing law. Therefore, since

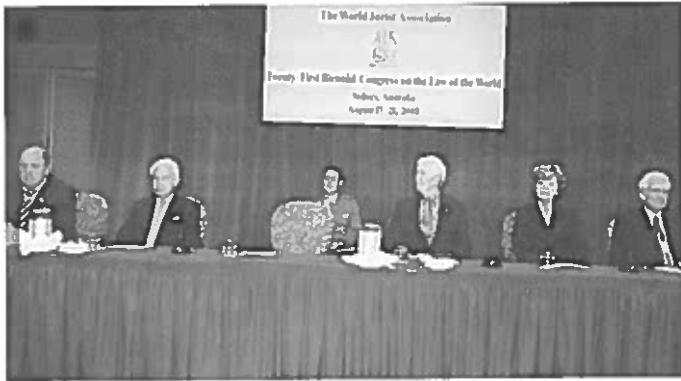
international law prohibits the development of such weapons, the court held the answer to the first question to be no.

Additionally, there are also international principles of non-intervention in the internal affairs of another nation, that lead the court to answer question two no as well. The court reasoned that only the Security Council of the United Nations has the authority to declare a preemptive strike against a sovereign nation. Article 33(1) of the UN Charter required that members seek alternative measures to avoid warfare and the court found no evidence that Delta had done so, therefore the answer the question 3 is also no at this time since the discussion of a preemptive strike is premature. Finally the court found that since Delta does not have the right to a preemptive strike against Alpha, Beta may not request such action and the answer to question four is no.

#### **RECEPTION: SUPREME COURT OF NSW**

Immediately following the esteemed Demonstration Trial, the Chief Justice of New South Wales hosted a beautiful reception for WJA delegates. The Chief Justice noted the importance of the World Jurist Association's contributions and the Demonstration Trial as a time honored tradition. All those present enjoyed hors d'oeuvres and the warm hospitality of the Chief Justice and the surroundings. A fabulous time was had by all present.





The Chair and final speaker on this panel, **Mr. Ronald Greenberg** from the USA, opened with a statement that in the USA, mediation has become a successful form of ADR due to the important role lawyers play. In fact, US courts have agreed to finance the training of lawyers to mediate disputes. In referring to Mr. Belohlavek's statements concerning the idea that arbitration may not be considered a form of ADR, Mr. Greenberg stated that in California, any procedure used outside a trial to resolve a dispute is considered a form of alternative dispute resolution. He stated that today about 98% of civil trials finally settle outside of court.

Mr. Greenberg then presented his thesis on the current uses of arbitration in the US context and the recent backlash to its use, specifically in connection with its use in employment contracts and consumer agreements. Mr. Greenberg indicated that many employers seeking to avoid jury trials have inserted arbitration clauses in their contract with employees. These same clauses have also limited the remedies available to employees. In summation, Mr. Greenberg stated that for clients who want to do business in the United States, if arbitration is included in an employment agreement, it is important that the client be aware of the law of the State where he will hire employees using such agreements. The courts of each State are subject to different laws and interpret the laws allowing for the use of arbitration differently. The general trend, he noted, is for courts to provide protection to employees and consumers.

### **INTERFAITH SERVICE**

The second part of the Biennial Conference, held in Adelaide, Australia, began with a Multi-faith Service for Peace held at St. Peter's Cathedral. The *Very Reverend Dean Steven Ogden* welcomed the delegates to Adelaide and acknowledged the important work that would be undertaken in the coming days. In recognition of the important role religions play in bringing about world harmony, members of the Adelaide legal community and representatives from major world religions offered reflections on faith and peace.

A highlight of the evening was the Children's Peace Offering during which

local children performed for the delegation, providing inspiration and hope for a more peaceful world. Another highlight was the keynote address delivered by The Honorable John Doyle, AC, Chief Justice of South Australia. The Service ended with prayers for peace by Dean Ogden.

### **ADELAIDE FESTIVAL CENTER**

Following the Interfaith Service delegates were invited to a welcoming reception hosted by the Premier of South Australia, **Michael Rann**. Held in the Lyrics Room of the Adelaide Festival Center, delegates enjoyed a warm and beautiful setting with views of the city around them. The Premier reminded the delegates that it is important for the legal profession to ensure that the average citizens understand and feel connected to the individuals who uphold and enforce the laws of the community. Specifically, Premier Rann focused on the judiciary and the often "clubby image that appears to exclude, not include, the community." He concluded his remarks reflecting of the tensions and debates between the executive, the Parliament, and the judiciary, stating that these are "good for democracy and good for justice."

### **OPENING CEREMONY: ADELAIDE**

The key note address, delivered by **The Honorable Daryl Williams**, Q.C. Attorney General of Australia, focused on the importance of fighting terrorism without losing sight of the Rule of Law. General Williams began by noting the pivotal role of Rule of Law in civil society - it is the moral and political authority for government action, it provides justice, human rights norms, and defines the way we see our selves and treat others.

The Attorney General noted that the terrorist attacks on 9/11 not only destroyed lives, symbols of democracy, and liberalization, but also demonstrated a blatant disregard for the Rule of Law. Specifically for Australia, he noted that the current efforts to combat terrorism have resulted in a positive and healthy examination of the Rule of Law and public debate regarding the efforts proposed by the bodies of government. The process has allowed the citizens to see how the checks and balances of their government can work to their benefit.

The Attorney General also discussed the efforts of other nations to protect their national interests and highlighted different legislative models that facilitate identification of terrorist organizations. Finally the Attorney General expressed support for Australia's alliance with other nations, including the US, in the fight against terrorism and reminded the delegates that the "law does not exist in a vacuum;" new and innovative responses will be necessary in these times.

A vote of thanks on behalf of the World Jurist Association was provided by **Professor David Flint**. He noted that when Charles S. Rhyne began the WJA, the threat of terrorism was not as serious a concern as it is now.

Today however, with the potential use of modern technology and knowledge, the threat is real and of great concern. He thanked the Attorney General for his remarks and for reminding the delegates that as they confront new evolving issues, they must not forget fundamental Rule of Law principles.

### **IMPLEMENTING EFFECTIVE LOCAL GOVERNMENT STRUCTURES (PART II)**

#### **DELIVERY OF SERVICES**

The second of two IMLA panel sessions was chaired by **Ms. Patricia Lynch**, City Attorney of the City of Reno, Nevada (USA), this one focusing on the delivery of services, and in particular on privatization and public/private relationships to meet the needs of citizens.

Discussions were begun by **Ms. Iris Jones**, Police Monitor for the City of Austin, Texas (USA), with a look at the pros and cons of privatizing public services. She discussed the many services citizens expect to receive from public entities. Ms. Jones also outlined the benefits as well as the cautions that must be kept in mind when a public entity seeks to outsource or privatize the public service it is charged with providing.

Ms. Jones provided case studies, including South Africa, Australia, and the US, noting particular efforts to privatize delivery of water. Ms. Jones noted both successes and tragic failures of privatization efforts.

The second speaker, *Mr. Robert J. Alfton*, who is of counsel to the law firm Miller O'Brien (USA) provided an overview of the methods and uses of privatization at various levels of government in the US and then noted the responses by labor unions when faced with these systems. He stressed the impact, often negative, that privatization can have on public workers and noted that their concerns can be "one of the biggest barriers to privatization." Mr. Alfton concluded with a word of caution regarding privatization and encouraged public officials to proceed carefully when looking into the various forms of privatization.

Another method of delivering public services was looked at by *Ms. Eunice Gibson*, Lecturer in Law at the University of Wisconsin Law School (USA), this was namely through the use of volunteers. She examined the legal issues that may arise with governments seek to use volunteers, noting that the benefits do ultimately outweigh the risks. She provided suggestions on ways in which governments maximize the benefits it receives and the volunteer receives from such workers. Ms. Gibson noted that the United Nations had declared the 2001 as the International Year of the Volunteers, and as a result, numerous nations have examined rules and laws that might impede volunteer service and developed amendments to help and support them.

In his paper, the final speaker, *Mr. Stuart Peters*, Strategic Planning Manager for the City of Reno, Nevada, noted, "the ultimate purpose of government [and] most particularly local government is to promote and preserve the well-being and quality of life of its citizens, [therefore] economic isolation is not an option." Mr. Peters highlighted the imperative need for government to compete in the global market place. Mr. Peters also noted the opportunity to learn from other local governments and adapt policies at home.

## **HUMAN RIGHTS**

The Human Rights Panel on Friday, August 22, 2003 was chaired by *Professor Ved Nanda*. The first speaker, *Professor David Flint*, Chairman of the Australian Broadcasting Authority, and Chair of the Host Committee for the WJA Australia Congress, discussed the balance of freedom & speech and the protection of

children in the context of internet regulation. Professor Flint began by declaring that which freedom of speech was a fundamental right to be protected, it is not absolute and the need to often restrict it in order to protect the vulnerable in society is both necessary and acceptable.

He focused his discussion on the proliferation of child pornography, often violent, and highly abusive of children, on the Internet. In this context, Professor Flint said, the freedom of speech has to be restricted. Citing the British Broadcast Company, he noted that the number of pornographic websites has doubled in the last year, while the Internet is a wonderful tool, its regulation in some areas is essential. With regards to the Australian efforts, Professor Flint presented a case study of the co-regulatory scheme in place since January 1, 2000. The key components of this scheme are:

- (1) a complaints hotline established at the Australian Broadcasting Authority (ABA),
- (2) codes of practice filed by the industry and lodged at the ABA,
- (3) efforts to educate the community about such websites, ways to minimize child access, and the use of and limitations of filters.

The scheme also offers ways in which the ABA can enforce rules that prohibit or require restrictions on particular websites, although this power, admitted Professor Flint, is not always successful.

The problems in enforcement often stem from the fact that many such websites are not hosted or operated from Australia, so the ABA lacks jurisdiction to enforce laws against them. In this case, companies offering filters are notified about the sites and through cooperation with Interpol host countries are notified so they may seek action. Professor Flint concluded by reminding the delegates that this is an area where freedom of speech is not absolute and must be restricted to prevent harmful effects on society.

The second speaker offered another aspect of the discussion of human rights *Judge Deon Van Zyl*, Court of Appeals, South Africa, looked at the efforts to protect human rights on the African continent. Judge Van Zyl acknowledged that overall the African nations have a poor human rights record, and there remains a

long way to go. However, he said, Africa has entered a "post-dictatorship" period and there is reason to be hopeful and positive about the efforts currently underway.

Among the most important of these effort, expressed Judge Van Zyl, is the fact that citizens of Africa have begun to talk to each other, through entities like the Truth and Reconciliation Commission, and other efforts, the people of Africa are acknowledging the suffering of their neighbors and beginning to develop a greater understanding of their history and culture. While Africa is a very diverse continent, today there are signs that this diversity is being celebrated.

Judge Van Zyl provided specific examples of these positive strides by noting the case of Swaziland. One of the lessons to be learned from the recent years in Swaziland is that multi-party elections are not the only way to achieve democracy or human rights protections. Then immediately following independence a British-based constitution was drafted in the country, however after years of continued difficulty, the ruling monarch recognized that this constitution failed to take into account the unique and deep-rooted culture and traditions of the country. Today a new constitution is being adopted one that has human rights protections and recognizes indigenous systems as well.

*Professor Nanda* concluded the panel with remarks regarding the mixed record on human rights around the world. Progress has been made in making the fight for human rights more than a fashionable thing to advocate today it is something people from all walks of life and around the world are championing and working towards in a real way. However we still continue to struggle with definitions of human rights, nations seeking to protect their national sovereignty when questioned about human rights abuses, and arguments of cultural relativism.

With regards to the definition question, Professor Nanda argued that the various rights embodied in the Civil and Political Covenants, and the Economic, Social and Cultural Covenants should no longer be considered separate we do not need levels or tiers of rights, these should be recognized together and intrinsically linked.

Noting the enforcement of human rights norms is perhaps the key to their success, Professor Nanda concluded his remarks with a recognition of the strong contributions of civil society in realizing these norms.

He cited the land mines treaty, the women's conventions, the treaty on the protection of children and lastly the International Criminal Court as successes of individuals, organizations, and grassroots efforts in bringing about recognition of rights and effecting concrete solutions to abuses or violations.

The panel concluded with several questions and comments from the floor, perhaps the most stirring focusing on the role of judiciary and bills of rights in national constitutions. Additionally one delegate noted the UN's effort to draft rights for the disabled and invited members of the WJA to join in this project. These are examples of some of the dialogue created by WJA delegates.

#### **ENVIRONMENTAL LAW AND SUSTAINABLE DEVELOPMENT**

*Prof. Michael Jeffery* from Australia presented an in depth review of free trade and intellectual property rights on biodiversity conservation. He considered this in light of the 1992 convention on biological diversity adopted in Nairobi and signed by over 150 States and the TRIPS agreement, which came into force on January 1995.

The TRIPS agreement, the most comprehensive multilateral agreement on intellectual property sets forth the minimum level of intellectual property rights (IPR), which must be provided by all State parties to the World Trade Organization.

Prof. Jeffery noted that for companies to have the incentive to produce products with a profit, the protection of IPRs is required. However the impact of IPRs, especially patents, on the success of the biodiversity convention, may not be positive as countries come under increasing trade pressure to allow the patenting of various resources such as plants or animals. The result of the above, Prof. Jeffery stated, is that many countries are finding it necessary to revise their laws to remove exceptions to patentability.

He stated that the development of clear guidelines providing minimum requirements with respect to the convention on biodiversity obligations as it relates to the TRIPS agreement and the national implementation of IPR rights would be a good starting point. He concluded that the Bonn 2002 guidelines on access to genetic resources and fair and equitable sharing of the benefits arising out of their utilization is a significant achievement and he supported additional efforts in this regard.

An interesting and thought provoking analysis of markets, ethics, and the law was presented by *Prof. Joseph Dellapenna* from the United States. He stated that today, people believe that the great economic and political pressures that are exerted on markets will solve the problems that may arise. However, he continually warned that markets are not the answer to many of our problems, especially with regard to the regulation of our precious and non-renewable natural resources. While market economies do work in a variety of different situations, they may not be the best regulator for the use and appropriation of natural resources.

Prof. Dellapenna focused his remarks on the supply of water and the efforts that have been undertaken in the US to privatize water thereby allowing the markets to act as a management institution.

In other instances, Prof. Dellapenna pointed out where cities have privatized the supply of water, and how they now seek to buy back its water utilities. He noted that these privatizations were undertaken without the contracts under which the privatization was authorized drafted to include clauses guaranteeing that the public would receive the benefits proposed by the companies supporting privatization.

Prof. Dellapenna stated that resources such as water and air have the unique quality of being either clean or dirty for all users. He said that water is a resource that is constantly moving and that it is difficult to contain as you would contain another type of resource. This in addition to the fact that when water is taken from a source, it is really being taken from the public were reasons that such a resource should not be managed under a private system.

#### **BUSINESS DEVELOPMENT: ENCOURAGING DEVELOPMENT WITHIN LEGAL PARAMETERS**

An interesting analysis of the insurance markets and the difficulties that national governments have experienced with their regulation was presented by *Prof. Andy Schmulow* from Melbourne, Australia. He presented ideas to investigate the feasibility of policy-only liability insurance for direct insurers as a market-based mechanism to replace prudential regulation following the collapse of the HIH Company, Australia's second largest insurance company. He stated that regulators are now attempting to solve Australia's insurance problems, but are failing due to the government's inability to properly or adequately regulate the industry. Mr. Schmulow suggested that instead of direct insurers being required to comply with prudential regulations, which has many times not worked, policy-only insurance offered by offshore insurance entities should be considered.

Mr. Schmulow did bring to light some of the potential shortcomings of his proposal, including the increased operating costs for the direct insurers, the loss of government control over the oversight of the insurance sector, and industrial espionage, but that other mitigating factors would work to reduce the negative effect of these consequences. Overall, he said that in order to avoid the kind of collapse in the insurance industry that we witnessed in the savings and loan industry, a system of cross-guarantees must be put in place as reflected in the model proposed today.

*Ms. Andrea Johnson* from the USA then took the microphone, explaining how the opening of markets to privatization has failed in several developing countries. She stated that under the rule of law, governments should provide frameworks based on predictability.

The reality is that predictability is missing where developing countries that have privatized industries have found themselves in stressed economic conditions. In some extreme cases, failed privatizations have caused the collapse of a nation's financial markets. In these cases, it is often where abuses and corruption ran rampant that the move to privatization failed. Ms Johnson said that the lessons we should learn from past failures in the move to privatize include ensuring that existing laws

are enforced during the privatization process, that tax evasion is brought under control, that the risk of devaluation is considered and that corruption must be stopped. To make a government privatization program work, it must be carefully managed and it should be based on a clear action plan. Asset stripping of a nation's resources must not be allowed and that the globalization of national economies should be factored into a privatization program. Additionally, the conditions imposed by the IMF where it assists a developing country must also be carefully considered to avoid failure.

The last speaker on this panel, *Mr. Joseph Van Eaton* from the United States, presented his paper entitled *Telecommunications Law & Economic Development: A US Perspective*. Mr. Van Eaton argued that the US experience has shown that the development of a robust information and communications technology infrastructure is the key to economic development. He said that experience also suggests that development of the infrastructure is dependant on the rule of law.

Mr. Van Eaton explained that the essentials of a legal structure for regulating companies that provide telecommunications services or infrastructure as opposed to focusing on the equally important legal structures essential to the ongoing use of telecommunications infrastructure. Mr. Van Eaton considered the tensions that exist between infrastructure and social developments and private versus public control.

Noting that restructuring within the telecommunications sector has been a worldwide phenomenon, he stated that restructuring of the telecommunications sector, including commercializing the telephone enterprise, addresses only half the problem. The other half, he said is to maintain appropriate government controls over the telecommunications sector to ensure that the new restructuring does achieve the purposes intended by the government.

Mr. Van Eaton considered various examples around the world where telecommunications and economic development have occurred outside the traditional model. Examples included the South Pacific island nation of Niue, the confederated tribes of Warm Springs,

Oregon in the United States and the city of Tallahassee, Florida. The Niue example was particularly interesting in that in order to develop its telecommunications network, the government agreed to license to a private nongovernmental organization its sovereign rights in the nations country code top-level domain name (.nu).

This private organization markets the domain name around the world, inciting them to create domain names using .nu rather than .com or other top-level domain names that are available. The company claims about 140,000 subscribers at USD 80 for a two-year license. The money collected was used to build a wireless network on the island and provide free wireless (Wi-Fi) services to all the islands inhabitants. For those without a computer, an internet café was built.

Mr. Van Eaton explained that informal networks could also be created at extremely low cost allowing people to operate outside the usual systems. He questioned how such network would be regulated in the future. He said that privatization, liberalization and social goals must all be balanced when seeking to regulate these networks.

#### **RECEPTION: TOWN HALL QUEENADELAIDE ROOM**

After the first full day of panel sessions in Adelaide, the *Lord Mayor* hosted a charming reception in the magnificent Queen Adelaide Room of Adelaide Town Hall. The Lord Mayor greeted WJA delegates and encouraged the goals and direction of the Twenty-first Biennial Congress. Attendees took this opportunity to enjoy the atmosphere and rekindle old friendships while making new ones.

#### **EMERGING TRENDS IN LAW AND POLICY**

*Professor Abdul Aziz Bari* from Malaysia discussed the approaches and influences to constitutional interpretation. While he noted that there are important differences and variations on emphasis among jurisdictions, there are common themes in constitutional interpretation. Prof. Bari also noted that despite the wide variety of interpretation methods used around the

world, the literal approach stands out in cases where this approach can conflict with the idea of constitutionality itself, particularly with regard to maintenance of constitutional government and the protection of fundamental li

As circumstances within a change, the words of the constitution need to be seen in light of changes. Prof. Bari stated that there is to strike a balance between the past and present, between the time when the constitution was drafted and the time when problems or conflicts arise. Phrases in constitutions are also written in such a way that they are ambiguous and capable of accommodating more than one mean

Prof. Bari said that constitutional interpretation is basically concerned with ascertaining the meaning of a constitutional provision. The way this is done may be divided into two broad categories: literal interpretation or construction. Interpretation concerns itself with discovering the meaning of the text while construction is a more legalistic in their search for meaning. As legal scholars, Prof. Bari pointed out, he divided the approach to constitutional interpretation into textual and intention

The textualists, he explained, place emphasis on the document itself rather than on external materials. The literalists seek to determine the framers intention when the document was first drafted. Other methods of Interpretation Prof. Bari mentioned included literal and purposive.

Prof. Bari stated that constitutions are sometimes drafted to be more political than legal. Distinguishing the two may be a matter of considering the length of the documents. He noted that the Indian constitution only had seven articles and twenty-seven brief amendments. The Indian or Malaysian constitutions are much longer with the Indian constitution containing more than 400 articles and twelve schedules.

The court that has the power to interpret a constitution is also an important factor to consider. In some countries like Germany, a constitutional court has jurisdiction to interpret the constitution while other nations, like the United States, allow their high court to engage in interpretation when necessary.



## CLOSING CEREMONY

Prof. Bari shared with the delegates the current state of constitutional interpretation in Malaysia. He explained the important legacy the British left in Malaysia with regard to constitutional law and interpretation. He said that in Malaysia the Federal Court is the court that has the duty to rule on constitutional amendments and that fundamental liberties like those contained in many nations constitutions are not a central part of the Malay constitution.

**The Honorable Judge Yueng Sik Yuen** from Mauritius presented his paper on No Fault, Strict Liability and Social Engineering. He questioned why damages are award in civil litigations and stated that traditionally, when the defendant was found at fault for committing a willful act or a negligent act while acting with imprudence. The problem with this system, Judge Yueng explained was that in cases where the plaintiff could not prove the defendant's fault, he may be barred from collecting damages.

Judge Yueng referred to several articles within the French civil code where he stated that every person who is at fault must repair the prejudice caused by him or her. He also referred to the articles relative to harm caused by animals or buildings, stating that when an animal or an building causes harm, it is the custodian of the thing who is responsible.

Judge Yueng explained how liability might be based either on fault or on causation. He considered what would happen if no fault liability was imposed on governments so that the victims of human rights violations could be compensated. In this case, the government controlling the territory where the violation occurred would be responsible for the resulting harm, regardless of fault.

**Prof. Nanda** commented that only an international convention would provide a basis for the application of strict liability to national governments and that to date, they have not accepted such a proposal. He said that it is important to focus on inciting countries to ratify existing human rights treaties and implement them. Prof. Nanda stated that we have enough laws that need to be respected and that we may be better off seeking to implement existing laws rather than create new ones.

Then **Mr. Ronald Greenberg** commented that it is important to distinguish between strict liability and no fault liability, where strict liability is usually applied only to the harm caused by consumer goods and requires the evidencing of some defect in the good. No fault, on the other hand is a policy-based concept where, for example, a motorist would not have to prove who harmed him in the event of an accident in order to collect from his insurance company.

### ROUNDTABLE: PLANNING FOR THE FUTURE

The final panel session of the conference was a first for the World Jurist Association. The session, entitled *Planning for the Future*, was held as a roundtable discussion with **Prof. Ved Nanda, Garry Hunter, The Hon. Deon Van Zyl, Justice Corona, and David Flint** serving as facilitators. The delegates were invited to comment on the programs held, legal concerns, WJA programming, and other related matters.

Several delegates rose to express feedback regarding the Biennial Congress and topics they would like to see at future events. Among the comments offered were suggestions that the WJA provide educational programming on product liability, codes of ethics, status of insurance for terrorism related incidents, a demonstration of international arbitration, land reform, mechanism to control illegal drugs, sports law, and training for members of administrative tribunals. Additionally the delegates offered feedback regarding the venue selection, with some suggesting that using two cities increases cost and cuts down on time for sessions or networking, two facets of Congresses valued by attendees.

Several delegates rose to request the Association make the names and contact information of those attendee the meetings available, some suggested using the internet to create chat rooms and other features where interested members could continue dialogue between conferences. Professor Nanda, speaking on behalf of the Board of Directors, assured the delegates that the staff and Board would consider all of their comments.

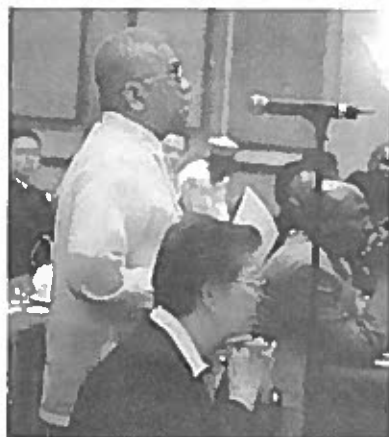
The Closing Ceremony in Adelaide continued the WJA's long-standing tradition of creating a forum where the delegations review the legal issues presented during the Congress and adopt resolutions to help inform and guide the international legal community.

The Ceremony began with reports on the 15 panels presented during the Congress. Following the brief reports, **President Thümmel** called upon **Professor Ved Nanda**, in his capacity as Chair of the Resolutions Committee, to present the resolutions as drafted by the committee. These resolutions are the result of direct work undertaken during each panel session as well as careful deliberations by Committee members. This year the following persons served on the Resolutions Committee, and the WJA expresses its appreciation to them: **Joe Dellapenna, Andrea Johnson, Garry Hunter, Bruce Lubarsky, Ronald M. Greenberg, Deon van Zyl, and Ved Nanda (Chair)**

The resolutions represent the position of the World Jurist Association and its members and are presented to Heads of State and Government, Ministers of Justice, Judges of the Supreme Courts and lower courts, the United Nations, and other leading international organizations. It is the hope of the WJA that these resolutions will provide a mandate for the leaders of the world to address the most pressing issues of the time.

After the delegates unanimously adopted all of the presented resolutions, President Thümmel turned the attendees attention to the results of the Board of Governors' election. After concluding the report on the elections, President Thümmel turned the podium over to incoming **President Valerij Yevdokimov**. Mr. Yevdokimov is the first president elected from the CIS region and represents an important step in the efforts of the WJA to expand its efforts to bring Rule of Law and peace to this developing region.

To the pleasure of all in attendance, Mr. Yevdokimov delivered his acceptance speech in English, demonstrating his continued efforts to bridge the differences and bring together all of the delegates of the WJA. The concept of Mr. Yevdokimov's speech serves as his first presidential message for this edition of the World Jurist. This can be found on page 2.





## Words of Appreciation

The World Jurist Association would like to take this opportunity to thank a variety of individuals for their support and efforts during the preparation and execution of the Twenty-first Biennial Congress on the Law of the World. Without their help, our success would not have been so readily attained.

First and foremost, thank you to all of the delegates who participated so willingly and actively in our Congress. Your support and contributions make each and every event unique.

We whole-heartedly thank our local host committee. In particular, *David Flint (chair)* and *Bill Cossey*, both of whom went above and beyond general expectations to create a spectacular and well-organized event. We also thank for their generosity, *Warwick L Smith Exec. Dir. Macquarie Bank Ltd* and the *Australian Broadcasting Authority*.

Local participation often completes our program and Australia was no different. We extend thanks to the *Governor General of Australia*, *The Chief Justice of New South Wales*, *The Premier of South Australia*, *The Lord Mayor of Sydney*, and *The Lord Mayor of Adelaide*. The WJA staff and delegates appreciate the warm hospitality and professionalism displayed by your governments.

In addition to the excellent intellectual program, the spiritual portion of the schedule was so nicely complemented by the offices of *St. Mary's Cathedral in Sydney* and *St. Peter's Cathedral in Adelaide*. The WJA thanks all those individuals who were instrumental in making our visit to each of these places possible.

The WJA also owes a debt of gratitude to *Mr Henry Underhill*, Executive Director and General Counsel of IMLA, for his cooperation. We would also like to thank *Veronica and Jürgen Kleffner* and *Manuel and Charo Alonso* for their continued support of WJA events. Lastly, special thanks to *Sona Pancholy* and *Andrew Gareleck* for their writing and reporting contributions.



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## Workpapers

As always, the World Jurist Association invites members and recipients to order workpapers from the Twenty-first Biennial Congress on the Law of the World.

Workpapers are a way to further research the pressing issues discussed at the Congress in Sydney / Adelaide. This offer is for both members and non-members alike.

Please contact the WJA Washington, DC office for details on available current or past titles and price lists. Workpaper information is also available on our website at:

[www.worldjurist.org](http://www.worldjurist.org)

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