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# The World Jurist

BULLETIN OF THE WORLD JURIST ASSOCIATION

7910 Woodmont Avenue, Suite 1440 • Bethesda, MD 20814 • USA • Phone: 202.466.5428 • Fax: 202.452.8540 • E-mail: wja@worldjurist.org • Web: www.worldjurist.org

## WJA Twenty-Third Biennial Congress on the Law of the World

The World Jurist Association's Twenty-Third Biennial Congress on the Law of the World was held March 22–27, 2009 in Kyiv, Ukraine. This first Congress held in Eastern Europe brought together delegates from 26 countries, representing every region of the world. Our Host Committee was chaired by **Valeriy Yevdokymov**, Chair of the Union of Lawyers of Ukraine.

### Sunday, March 22—World Law Day

World Law Day—a unique celebration of the importance of the Rule of Law—was held on the first day of the Congress. This year's celebration was held at the State Tax Academy where we were treated to dinner and a wonderful reception. We were entertained by students of the Academy who performed traditional Ukrainian dances, songs, and orchestra music.

### Monday, March 23—Opening Ceremony

The Congress opened at the Ukrainian House. The following persons presided over the Opening Ceremonies: WJA Past and Honorary President, **Avv. Lucio Ghia**; Head of the Kyiv City Administration, **Leonid Chernovetsky**; Ombudsman of Ukraine, **Nina Karpachova**; Deputy Head of the Constitutional Court of Ukraine, **Anatoliy Golovin**; Head of the Supreme Court, **Vasyl Onopenko**; Minister of Justice of Ukraine, **Mykola Onishchuk**; WJA President, **Ronald M. Greenberg**; Deputy Head of the Supreme Court, **Olexander Lavrynovych**; Deputy Prosecutor General, Head of the Union of Jurists, and WJA President-Elect **Valeriy Yevdokymov**; **Sergiy Vynokurov**; Head of the High Council of Justice, **Lidia Izovitova**; and Head of the Commission of Supreme Council of Ukraine, **Sergiy Kivalov**.

WJA President **Ronald M. Greenberg** thanked the dignitaries in attendance as well as sponsors Aerosvit and Chadbourne & Parke, LLP. He remarked that the WJA is meeting today, with the finest judges and lawyers from around the world, to promote a better tomorrow.



The Congress opened at the Ukrainian house, presided over by Avv. Lucio Ghia, Leonid Chernovetsky, Nina Karpachova, Anatoliy Golovin, Vasyl Onopenko, Mykola Onishchuk, Ronald M. Greenberg, Olexander Lavrynovych, Valeriy Yevdokimov, Sergiy Vynokurov, Lidia Izovitova and Sergiy Kivalov.

**Valeriy Yevdokymov**, Chair of the Host Committee, then read a message from the President of Ukraine welcoming the WJA to Ukraine and praising the WJA for its role in promoting democracy and the Rule of Law. The President's message concluded with a wish that wisdom and proficiency guide the WJA and the 23rd Biennial Congress on the Law of the World.

Mr. Yevdokymov then read a message from **Volodymyr Lytvyn**, Chair, Supreme Council, welcoming the WJA and emphasizing that the WJA "is the largest and most influential association that can raise a concerted effort from all nations." The message concluded that it was an honor to have Kyiv chosen as the site for the first Congress in the Eastern bloc.

The Minister of Justice of Ukraine, **Mykola Onishchuk**, read a message from the Prime Minister welcoming the

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## President's Message

Dear colleagues,

Please accept my deep appreciation for having expressed your high trust to the young, sovereign, independent state of Ukraine, which is on its way of insistently and constantly strengthening the principles of democracy and the basis for the Rule of Law and justice, having visited Ukraine and its capital—Kyiv.

That's the reason for which I take the successful holding of the Congress as well as the results of the election and my election for the President's of WJA office—primarily as the success of my state—with its rich legal traditions, dignified present and, no doubts, promising future and our common success, your success, my dear colleagues.

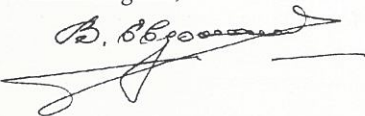
We will extensively continue and strengthen our noble motto "world peace through the rule of law" by practical, effective content, at the same time understanding that the achievement of these significant aims is possible only by the ways of international cooperation.

I am sure that the experience of the lawyer, public figure and politician, my participation in the activity of the WJA will be useful, and I vow and declare that I will serve for the good of our association.

I see among the urgent challenges—the development of the just concept of the membership and geographical expansion of our organization. It means that our nearest object is the attraction of the collective members from the Eastern and Central Europe. Moreover it is necessary to renew our activity in the countries of Western Europe, Northern America and Africa. In the nearest future I will provide you with the new program of our activity.

I would like to thank you once again for your constant support and I hope to greet you in Austria, Vienna 21-25, October 2009, where we will host a celebratory conference on the Role of the Legal Professional in Conflict Resolution and Reconciliation. After the sessions all the participants of the conference are invited to commemorate the 10th anniversary of the opening of the Rule of Law Monument in St. Margarethen. I hope to see you, my dear colleagues, during this important event which is of high importance for the WJA and the rule of law.

Warmest regards,



Valeriy Yevdokymov



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# The World Jurist

BULLETIN OF THE WORLD JURIST ASSOCIATION

**Editor** Sona Pancholy

**Staff** Folake Ogunyemi  
Rachael Gubernick

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WJA to Kyiv and noting his honor in being a lawyer and sharing the great responsibility of legal work. He noted that in Ukraine, lawyers in the government have ensured that the policies are written and laws are being harmonized; the proficiency and commitment of the WJA, he stated, will further international relations.

Speaking on his own behalf, Minister Onishchuk welcomed the WJA and its delegates and noted his pride that Kyiv was chosen as it supports Kyiv's efforts to become more democratic. Rule of law, he noted, is a core philosophy and key for constitutional development. Minister Onishchuk called on Ukraine to make the system more democratic, create a bicameral parliament, institute local self-governance, and establish judicial reform.

Deputy Head of the Supreme Court, **Olexander Lavrynovych** praised the WJA for choosing the right subjects for the Congress, as it is imperative to have the legal instruments to address the current crises. He beseeched everyone in attendance to meet, learn, and use this Congress to gather knowledge and connections from around the world.

Ombudsman of Ukraine, **Nina Karpachova**, welcomed the WJA and called

on everyone to work "for poverty control, migration and rights of laborers, and anti-terrorism." Ms. Karpachova then presented an award of the Ombudsman to outgoing WJA President **Ronald M. Greenberg** for Human Rights.

### Panel Session: Global Economic Issues

Ms. **Iris Jones** (USA), Chief Business Development Officer, Chadbourne & Parke, LLP moderated the first panel session during which she noted the importance of not just looking at the macro-economic concerns facing governments and industries, but the direct impact these decisions have on individuals. She urged the members of the WJA to consider their role in framing a new economic outlook.

**Igor Dryzchaniiy** (Ukraine) spoke first on current global economic outlooks noting "the crisis has hit the most sustainable institutions around the world" and "people are talking about it." Mr. Dryzchaniiy explained how the market and capitalism can coexist with human rights.

Mr. Dryzchaniiy then called on the WJA to analyze the legal aspects of the crisis management including: (1) exchanging information and drafting laws, (2) analyzing the laws around the

world, (3) preparing reports and writing papers, and (4) conducting independent consulting.

The next speaker was **Adam Lindgren** (USA) presenting a paper prepared by **Steven Meyers** (USA). Mr. Lindgren examined the idea that given the current economic climate this is a unique opportunity for lawyers to help their clients. Lawyers can help clients make rapid decisions when it comes to land-use planning and growth of cities. Lawyers must counsel their clients to function within the law and not ignore it. He claimed that uncontrolled growth in the west is not sustainable either environmentally or economically—as global climate change increases we must refocus our development strategy.

### Panel Session: The Independence of the Courts

First to speak was Constitutional Court Judge **Volodymyr Kampo** (Ukraine). Judge Kampo explained that in the Ukrainian Constitution of 1996, judicial independence is guaranteed and the court will declare unconstitutional any law impeding this independence. He considered the constitutional reforms that Ukraine is facing in an attempt to adjust to European standards. Judge Kampo called for starting anew rather than updating the old laws because only once the government is responsible to face claims from civilians can they move to a more democratic model. He concluded that it is the role of the constitutional and administrative courts to protect citizens' rights and freedoms and he again called for the need to ensure independence of the courts.

**Pedro (Pete) Principe**, Lawyer (Philippines) spoke next on how to balance an independent judiciary with state security. He emphasized that separation of power is the hallmark of a democratic society and is codified in the Philippine Constitution; and, a government should accept the decisions of the courts. He offered that because of the unique experience the Philippines has had under both martial and normal

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The Place of Justice in the Legal Terrain of the State panel was moderated by Valeriy Yevdokymov. The distinguished speakers were Mr. Alexander Pasenyuk (Ukraine) and Mr. Sergey Vinokurov (Ukraine).



## Congress *continued from page 3*

regimes that the Philippine experience is a good model through which to consider whether there can be a balance of an independent judiciary and state security.

Prof. **Karel Klima** (Czech Republic) then presented a comparative study on the independent judiciary. "The transparent separation of the judiciary from other governmental powers is," he argued, "a decisive and important sign of people's sovereignty." Prof. Klima noted that European constitutional culture has created specialized constitutional review. He described constitutional courts in Europe—the role they play, their composition, and their relationship to the government and to international treaties. Constitutional review must ensure that future legislation will not eliminate the independence of the judiciary.

The final speaker, and also moderator of the panel was High Court Judge **Deon Van Zyl** (South Africa) who spoke on judicial independence in the South African context. He agreed with the other panelists that a constitutional guarantee for independence is necessary. Judges are passing down judgments that the politicians do not like prompting them to call the legitimacy of the judge into question. He argued that the attack on the judiciary will undermine public confidence in the judiciary and that the constitution may need to be amended to prevent politicians from having the power to appoint judges.

## Tuesday, March 24, Panel Session: The International Impact of Climate Change

Dra. **Monica Grill** (Argentina) moderated the panel and opened with a discussion on the effects of degradation and deforestation. The World Bank has recently calculated that the means of subsistence of a fourth of the world's population depend directly or indirectly on the forests. She argued that this constitutes a motive for the creation of integrated schemes to reduce poverty through the sustainable management of the forests.

**Leslie Lo Baugh** (USA) spoke on the Global Implications of Climate Change. He discussed the studies being conducted by militaries around the globe to determine the effects that climate change will have on national security. These militaries project that if climate change is left unchecked that there will be a mass migration of people due to flooding and draughts. This migration, in turn, will shift the political stability of many nations. He discussed various technologies that are available which can have measurable impacts without triggering social dislocation, radical degradation of standards of living, or placing huge economic burdens on the global economy.

**Viktor Dovhan** (Ukraine) then spoke on the UN Framework Convention on Climate Change (UNFCCC). In noting that 184 countries have already ratified the Kyoto Protocol, he called on the United States to join in ratifying. He explained that the main feature of the protocol is reduction targets and that countries must use national measures to achieve reductions. Three market based mechanisms to achieve reduction targets are: (1) emissions trading, (2) clean development, and (3) joint implementation.

**Alice Skipper** (Australia) discussed the legal perspective of Australia's response to climate change. She opened with pictures and a discussion of the rich biodiversity in her country and the effects that climate change

has and will continue to have on it. Australia, she noted, has responded by ratifying the Kyoto Protocol and binding green house gas targets. Ms. Skipper concluded that there are enough cases to say that the principles of ecological sustainable development must be taken into account in Australia.

**Robert Percival** (USA) spoke on global environmental law and how it is affected by climate change. Global environment law is not an entirely new phenomenon and four current factors are accelerating its development. They are: globalization of environmental concerns, growth of international trade and multinational corporations, increased global collaboration of environmental NGOs and environmental officials, development and implementation of multilateral environmental agreements. Although no one wants a bad economy, Professor Percival noted that economic downturns usually lead to a decrease in greenhouse gas emissions. With the environmental opportunities created, it will be easier to reach a consensus when the nations gather in Copenhagen in December to negotiate the Kyoto successor.

## Panel Session: Protecting Human Rights While Combating Terrorism

The first panelist to present was Professor **John Hall** (USA) who spoke about the need for a free press. He cautioned that since 9/11 many states have fallen into a trap set by the terrorists by



During the panel on Legal Education and the Role of the Legal Profession, Mr. John Dakin (Ukraine) addressed the international audience about the necessary elements of legal training in order to ensure the profession can successfully foster the Rule of Law. Also shown is panel moderator Professor Karel Klima (Czech Republic).



undermining the foundations of their systems in response to terrorism. He then praised the aggressive and diligent efforts of the free media for keeping us informed. He noted particular areas of legal concern: the right of confidential sources and the right to publish/disseminate information. But, Professor Hall concluded, post 9/11 laws around the world have been created with the specific intent to stifle legitimate political protest and to punish journalists for exposing government scandals.

**Kim Quarles** (USA) spoke next on behalf of **Ronald Robinson**. Ms. Quarles discussed peaceable assembly, speech, and religion as guaranteed by the Rule of Law. She argued that the difference between a terrorist act and a criminal act is intent. Ms. Quarles noted that courts have two functions: (1) to work as a mechanism to balance the exercise of power over individual rights and (2) to work to provide redress to anyone whose rights were violated. Compensation for the 9/11 victims was based on assets and created disparate results for similarly situated people. Ms. Quarles concluded by cautioning that this mechanism may be modeled for similar future tragedies.

Speaking about combating terrorism and the ensuing disrespect for individual freedom, Professor **Nina Karpachova** (Ukraine) called global terrorism a problem that knows no borders. Countries have responded by developing laws to combat this terrorism; but, the laws violate human rights. She noted that terrorism is now directly relevant to everyone. She considered the recent increase in pirate attacks off the coast of Somalia and said this proves that we can no longer condone some of the manifestations of terrorism. She challenged everyone to find new ways to combat this threat.

Next to speak was **Gemma Leticia Tablate** (Philippines); she spoke on the human rights violations of Overseas Filipino Workers (OFWs). The OFWs leave their families and face loneliness and cultural adjustment; they play an important role in Philip-



The Kyiv Congress provided a forum for delegates from around the world to gather and discuss the most important issues of international law.

pine economy. But, because of the economic crisis many are losing their jobs and returning home. Ms. Tablate called for an international law that would allow countries to protect their citizens in other countries. She concluded that her government is responding to the impact of the economy by taking measures to address the problems that will arise.

Hon. Justice **Theresa Uzokwe** (Nigeria) spoke on “The Right to Die.” The right to life is fundamental in many international and domestic documents and this might prevent individuals from having the right to take their own lives. The law in Nigeria says that you can never help someone kill himself. In the United Kingdom, a victim’s consent does not provide a defense. In contrast, the Netherlands has legalized euthanasia; and so, under a strict set of conditions, a physician may assist a patient’s death. Colombia also has laws allowing one to end his life under certain conditions.

**Eunice Gibson** (USA), who also moderated the panel, concluded with a presentation on Universal Jurisdiction—new cases and statutes in the US. She discussed three cases: *Blackwater*, *Chuckie Taylor*, and the *Chiquita Case*. Ms. Gibson then explained that although the Alien Tort Claims Act (ATCA) was passed in 1789 it lay dormant until 1980. She discussed new legal developments under ATCA.

### Panel Session: International Arbitration and Mediation Issues

The first panelist Dr. **Ann Brady** (UK) spoke on “Mediation Developments in Civil and Commercial Problems faced in the UK.” She noted the increase in the use of mediation across the European Union. A new EU Directive in 2008 related to civil and commercial matters seeks to create a workable light touch directive that reflects guidelines and best practice for mediators. The aims of the Directive are to: ensure the quality of mediation, promote the use of mediation, enforce mediation agreements by way of court orders, ensure confidentiality of mediation, and prevent expiry of limitation periods during the mediation process.

Justice **E’xiang Wan** (China) spoke next on the “Relationship Between Arbitration and Adjudication in China.” China allows for judicial review of arbitration. He explained that in 1987 when China ratified the 1958 New York Convention on the Recognition and Enforcement for Foreign Arbitral Awards, it found that the Convention does not deny the rationality of judicial review of arbitration. However, he noted that Chinese judges should be moderate and restrict judicial power and so not engage in excessive review going beyond the Convention.

**Jeremy Sharpe** (USA) spoke next on international arbitration. Although

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arbitration is a private affair, Mr. Sharpe described the role of states as indispensable—they establish the framework and they empower private entities to use arbitration. Almost all states have joined a global adjudication system. Iraq—a case study of a state hostile to international dispute resolution processes—has no international arbitration statute and therefore cannot participate in the global system and will have trouble participating in global trade commerce. Noting its importance, Mr. Sharpe called on Iraq to sign the NY Convention. State support is crucial unless national courts are willing to enforce arbitration agreements.

Senior Judge **Guomei Zheng** (China) spoke on the “Chinese Judicial Mediation System and its Application.” In China, judicial mediation is also called litigation mediation; it is a litigation process during which both parties reach an agreement and solve civil disputes through negotiation on a voluntary and equal basis under the auspices of the judge. He credited much of the success of judicial mediation in China to its cultural background, Judge Zheng continued that in judicial mediation “the parties know best the merits of the dispute and their own interests. The compromise reached at their own discretion shall be more favorable for their interests and proximate to the substantive equality that the parties pursue.” Judicial mediation helps improve judicial efficiency and economize judicial resources.

The next panelist speaking on arbitration and criminal law was Prof. Dr. **Alexander Belohlávek** (Czech Republic). He wanted to find an intersection between the two subjects as they are seemingly incompatible—arbitration is governed by private law and criminal law is a public law matter. Although there is no definition of criminal law in any international law sources, he is of the belief that lawyers can understand what is meant by criminal law. Prof. Belohlávek discussed the



*The students of the National University of State Tax Service of Ukraine entertained the delegations during the World Law Day Celebrations.*

International Criminal Court’s task force on criminal law and arbitration and noted several instances where criminal law and arbitration intersect. He concluded that this topic has been subject to scientific research conducted by the Department of Law, Faculty of Economic TU Ostrava—which is the University where Prof. Belohlávek lectures.

The panel was moderated by **Ronald M. Greenberg** (USA), who spoke next on the developments of arbitration in California. There parties are free to select the law they want applied to their case and so you can spell this out in your arbitration clause and specify which law for procedure and which law for substance. He concluded by noting that arbitration has done well in California because the courts are so congested people have to go elsewhere to air their complaints.

**Wednesday, March 25, Panel Session: Protection of Investments/Investment Disputes**

Prof. Dr. **Alexander Belohlávek** (Czech Republic) spoke on the “Settlement of Investment Disputes.” It is an area of law where the interaction of private and public law is very intensive. He particularly focused on jurisdiction and the nature of the law applicable to the merits, especially on an ICSID (International Centre for Dispute

Resolution) platform. He considered the procedural stages to identify and determine the applicable substantive law and the steps and phases in the proceedings for the applicable law. He discussed the diagonal effects of investor-state arbitration.

Senior Judge **Qiman Ling** (China) delivered a paper on the “Protection of International Investment in the Framework of China’s Legislative and Judicial System.” The Hon. Judge Ling discussed China’s intensifying efforts to protect international investment that has resulted in an appropriate legal system being set up with great importance attached to the judicial protection of international investment...” China is now continuing her efforts to provide better legal protection for international investment. We are confident that this will surely come true in a steadily improved environment for investment.”

Dr. **Veijo Heiskanen** (Switzerland) noted that the conventional wisdom is that because there is no global treaty we cannot really talk about a system of free movement of investment law. There is no free movement of international capital. There is some protection for an investor once he enters a country in treaty with his, but admission can still be denied. When investing in a foreign country, the investor must still comply with the local law when entering the



country. He concluded that in practice bilateral treaties operate as a regulatory framework for free movement of international capital.

### **Panel Session: The Need for Legal Education & The Role of the Legal Professional to Ensure the Rule of Law**

Professor **Karel Klima** (Czech Republic) moderated this panel noting the importance of examining the intersection between education and the role the trained professionals will play in furthering the rule of law.

**John Dakin** (Ukraine) emphasized that although Ukraine has taken steps to create a functioning executive and legislature it has never had a judiciary that has functioned according to the Rule of Law. Currently in Ukraine there is little respect for judges; and, because there is no precedential system, decisions are often arbitrary. He argued that only about five of the law schools provide enough standards that students can graduate and function well in international firms. Law courses in Ukraine do not encourage creative thinking. Law graduates can practice without an exam (an advocate can take an exam and join the Ukrainian Bar Association). Mr. Dakin further decried the fact that there are no professional standards that set up uniform standards and the opportunity to go abroad is not readily available to law graduates.

**Edward J. Sullivan** (USA) presented a paper entitled “Land Use in the United States: Evidence that the Rule of Law is Alive and Well.” Contrary to popular belief and prejudice, lawyers prevent tyranny and chaos. He looked to land use law as evidence that the Rule of Law is alive and well according to the vision of Charles S. Rhyne, founder of the WJA. Land use typically unfolds as a “contentious” debate between landowners, developers, and conservationists. It is a vexing issue in the US because “the individual right to own and use property clash[es] with the modern day realities of protecting a nation’s treasures and interests at the local, state, and national levels.”

**Benjamin E. Griffith** (USA) spoke on “The Development of the Rule of Law” and noted that “when we as lawyers and legal professionals do not complain when the Rule of Law is abused we become a part of the process. There are instances when we must come forward, times when lawyers themselves must put themselves on the line.” Law should be “accessible, precise, foreseeable in the way it is applied, it is just and equitable, it holds value and there is respect.”

Speaking on the solidarity of lawyers, **Paata Tsnobiladze** (Georgia) asked whether there is anything in common that makes such solidarity possible. Essentially, he answered, that all lawyers serve the Rule of Law is the most im-

portant starting point for solidarity, consolidation, and collaboration. A lawyer should, no matter what happens, remain a professional. Mr. Tsnobiladze continued, democracy is a journey not a destination and the standards are the same but wider and broader.

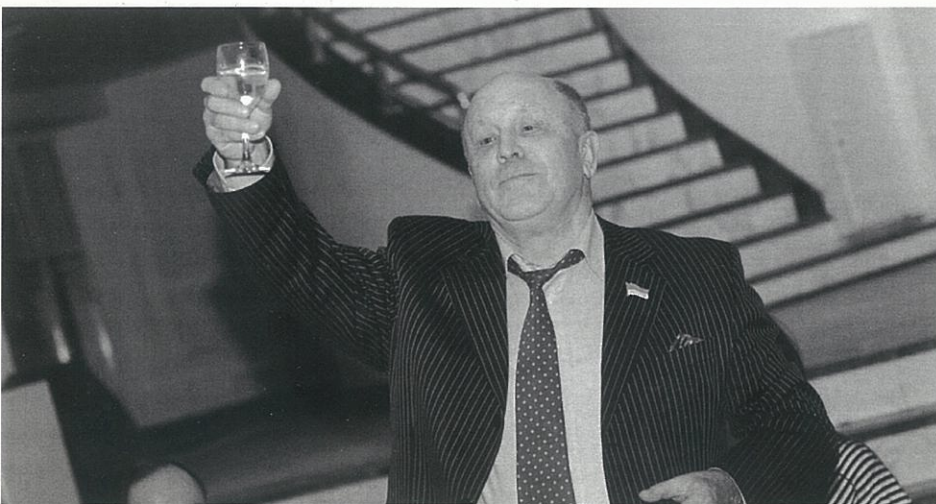
**Yun-Sang Kim** (Korea) concluded the panel with a talk on “The Role of the Prosecutor in Economic Crisis.” He explored different types of crimes committed by Korean corporations when public funds are expended and discussed effective responses to the crimes. He asserted that investigations and prosecutions should be aided by international cooperation especially in instances of globalized crime or assets being concealed in foreign countries. In the Korean case, Mr. Kim concluded that long-term investigation will improve accountability and governance and will “help them in gaining more trust from both domestic and overseas markets.”

### **Panel Session: Protecting Intellectual Property from International Piracy**

**Maren Christensen** (USA) moderated this panel and spoke on the problems associated with international film piracy—people bring camcorders into theaters and make illegal copies available. She demonstrated how quickly an illegal DVD can be reproduced and distributed around the world in mere days. The Rand Corporation think-tank has produced studies showing that organized crime is involved in many countries; and, the proceeds of this piracy support all kind of other criminal activities.

**Dong Zhang** (China) spoke on the “Legal Perspective of Traditional Chinese Medicine Patent Challenge.” One of the problems, she noted, is that it is rather hard to obtain one core patent on ‘traditional Chinese medicine’. In order for China to develop into a nation with developed medicine, it should make efforts to award foreign and domestic researchers and enterprises more patents and cultivate more Traditional Chinese Medicine Patents. She concluded that

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Host of the Kyiv Congress, Valeriy Yevdokymov, welcomed the nearly 300 delegates from around the world to the Kyiv Congress.



through revolutionary reform of patent legislation within five years China will realize its national strategy of promoting traditional Chinese medicinal development and internationalization.

**Peter Marcus** (USA) focused his discussion on trademark—emphasizing that since the industrial revolution and the mass production of goods, consumers no longer have the ability to know their goods. So, trademark law arose to protect consumers and inform them about the source and quality of the goods. For retail, this protection might simply be about prestige; for medicine it might mean the difference between health and death. For example, you see the logo of the WJA and you know the quality associated with it.

**Thursday, March 26,  
Demonstration Trial**

The Demonstration Trial entitled “Nuclear Energy and Nuclear Weapons: Legal Right to Develop Nuclear Energy without Monitoring and Restrictions, and Legal Right to Develop Nuclear Weapons as long as other Countries have Nuclear Weapons” The court was a mock of the International Court of Justice with The Hon. **Deon Van Zyl**, The Hon. **Yeung**, and The Hon. **Man-gaze** (presiding as chief justice) on the bench. **Ethia Simha** (Israel), **Enrica Ghia**, (Italy), and **Ronald M. Greenberg** served as counsel. The Demonstration Trial was moderated by **Bruce Lubarsky** (USA).

Mr. Lubarsky laid out the facts: Alpha is a country that wants both nuclear energy and nuclear weapons without monitoring or restrictions. Beta is a country that has both nuclear energy and nuclear weapons, and wants to prohibit Alpha from developing nuclear energy unless Alpha agrees to monitoring and restrictions. Delta is a small country located next to Alpha, and is an ally of Alpha. Delta supports Alpha’s right to develop nuclear energy without restrictions. Delta opposes Alpha’s development of nuclear weapons. Alpha, Beta, and Delta are now arguing in the



*Delegates enjoyed an opportunity to learn about their host country, its culture and traditions.*

International Court of Justice:

1. Does Alpha have the right to develop nuclear energy without monitoring and restrictions?
2. Does Alpha have the right to develop nuclear weapons as long as other countries have nuclear weapons?

Alpha’s position was that the case is governed by the Convention on Physical Protection of Nuclear Material and the Convention on Nuclear Safety. Every nation, it was argued, has the right to develop for peaceful use and for safe international transfer. It was further asserted that a sovereign nation has the right to develop nuclear weapons. Mr. Greenberg claimed that the Nonproliferation Treaty is flawed because it ignores exceptions such as India, Pakistan, and Israel; and, it has not showed signs of meeting the promise made in the treaty to eliminate nuclear weapons. Mr. Greenberg insisted that Alpha has the same right of Self-Defense as any other nation. Because the ICJ has concluded that there is neither customary nor international law authorizing or prohibiting nuclear weapons, Mr. Greenberg, concluded that the same holds true for the development of nuclear weapons.

Delta’s position was that it shares the need for nuclear energy which can

be used in hospitals, to grown more food, to abolish disease, and to clean water. Ms. Simha argued that nothing should impede the inalienable right to nuclear energy for peaceful purposes. She asserted that we will all be victims if we do not use nuclear energy in engineering, in medicine, in agriculture, and in all walks of life. Ms. Simha then stated Delta’s aversion to nuclear weapons because they are a threat to all humankind.

Beta’s position was that nuclear weapons have disastrous effects—the extent of which is not yet 100% clear. Ms. Ghia argued that Alpha was forgetting the global dimension to nuclear energy production; and, she questioned why Alpha feels the need to develop without monitoring and restrictions. Why, she asked, was Alpha not willing to join the group of states willing to share information?

When the Court returned with its decision, it took care to note that question two (nuclear weapons) brings up ethical and moral considerations as well as legal ones. The Court concluded that Beta has weapons that are stockpiled to threaten or use and not for peaceful purposes. The Court discussed the illegality of owning nuclear weapons and looked to the human rights law: right to life, prohibition on torture, liberty,



health standards, humanitarian law. It discussed proportionality and the inability for nuclear weapons to differentiate between civilians and combatants. It found that nuclear weapons have all the attributes of weapons of mass destruction banned under Hague. Every state has a duty to refrain from the threat or use of force against the sovereignty of another state. The Court thus held: Alpha has the right to develop nuclear energy for peaceful purposes, subject to monitoring and where necessary restrictions imposed by the IAEA; although there is no express prohibition against the development of nuclear weapons, it is contrary to the spirit of human and humanitarian treaties and customary law.

### Panel Session: The Place of Justice in the Legal Terrain of the State

**Alexander Pasenyuk** (Ukraine) reviewed the judicial system of Ukraine and noted that the administrative courts take on all disputes that deal with actions of government officials. He examined the challenges facing Ukraine today and declared that it must right the wrongs from the Soviet era. The public administration should be accountable to its constituency.

**Sergiy Vynokurov** (Ukraine) then spoke on the role of the public prosecutor in the Rule of Law in Ukraine. He considered optimal models for the



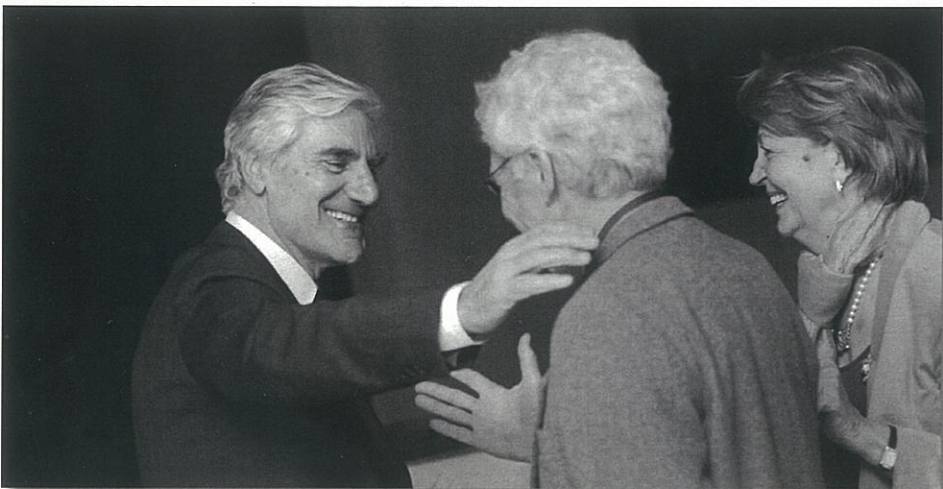
public prosecutor's office in both the short and long term. A plan to create a new Public Prosecutor's Office Law has been presented to Parliament—its provisions are not politically motivated and instead are all based on the Constitution and the principles of building a constitutional democratic state. The Prosecutor's Office functions in criminal prosecution and needs a new Criminal Procedure Code to be implemented.

### Closing Ceremony

During the Closing Ceremony, **Margaret Henneberry**, Executive Vice President, announced the names of the newly elected Board of Governors, who will serve during the 2009-2011 term: **Valeriy Yevdokymov**, (Ukraine), Presi-

*The WJA elected Valeriy Yevdokymov president of the Board of Governors at the close of the Kyiv Congress.*

dent; **Alexander Belohlávek** (Czech Republic), First Vice-President; **Paata Tsobiladze** (Georgia), Second Vice-President; **Kim Quarles** (USA), Third Vice-President; **Deon H. van Zyl** (South Africa), President for Africa; **Luis Eduardo Boffi Carri Perez** (Argentina), President for Americas; **Gemma L. Tablate** (Philippines), President for Asia; **Enrica Ghia** (Italy), President for Europe; **Oleksandr Pasienuk**, (Ukraine); President for CIS Countries; **Bola A. Ajibola** (Nigeria), President, WAJ; **Klaus-Günter Neumann**, (Germany), President, WAL; **Leonardo A. Quisumbing** (Philippines), President, WALP; and **Iris Jones** (USA), President, WBA.



*The WJA Congresses provide a unique opportunity for new and old friendship from around the world. Here Past President Lucio Ghia and his wife Saveria (Italy) greet President Ronald M. Greenberg (USA).*

*The World Jurist Association wishes to thank Valeriy Yevdokimov and the Union of Lawyers for hosting the 23rd Biennial Congress, without their tireless efforts, and the assistance of the many student volunteers this program would not have been possible. Additionally we thank each of our speakers, moderators and Demonstration Trial participants, their expertise ensured the success of our program. We also wish to recognize **Manuel Alonso** of Conference Travel International, the official WJA Travel Agent; **Garry Hunter** for preparing the Demonstration Trial materials; our sponsors, **Aerosvit and Chadbourne & Parke, LLP**; and our staff and volunteers, **Folake Ogunyemi, Rachael Gubernick, and Gita Pancholy**.*



# The World Jurist Association 23rd Biennial Congress on the Law of the World

## DECLARATIONS & RESOLUTIONS



### **2009 World Jurist Association Declaration of Appreciation**

The World Jurist Association acknowledges and thanks the following individuals and groups for their support and sponsorship of various events throughout the Twenty-Third Biennial Congress on the Law of the World:

Valeriy Yevdokymov, Chair,  
Local Host Committee

The Union of Lawyers of Ukraine

The Hon. Mykola Onishchuk,  
Minister of Justice of Ukraine

The Ministry of Justice of Ukraine

The Hon. Leonid Chernovetsky,  
Mayor of Kyiv, Ukraine

The Office of the Mayor of Kyiv

The National University  
of State Tax Service of Ukraine

Melnyk Petro,  
Rector of the National University of State Tax Service

Aerosvit Airlines, The Official Congress Airline

Chadbourne & Parke, LLP

And

The City of Kyiv, Ukraine



**2009 World Jurist Association Declaration of Kyiv**

At this critical juncture humanity is facing formidable challenges—global economic downturn; worldwide terror violence; and civil wars. In many countries we continue to see egregious violations of human rights and the negative impact of worldwide climate change.

It is imperative that:

- International institutions are strengthened so that they can play an effective role in bringing together Member States for concerted and cooperative action to address these challenges;
- The world community reaffirms the UN principles, especially regarding peaceful resolution of international conflicts and firm commitment to the protection of human rights and the rule of law;
- The Millennium Development Goals not be compromised;
- The “Responsibility to Protect,” a norm adopted at the UN World Summit in the Fall of 2005 be operationalized;
- The International Criminal Court become an effective instrument to ensure universal accountability and the end of impunity;
- Protection of human rights becomes a reality; and
- “Burden sharing” be accepted by States as their solemn responsibility to meet the needs of refugees and internally displaced persons.

**Resolution on the Developments and Reforms in the Judiciary**

WHEREAS, the administration of justice is vested in the Judiciary; thus, the Judiciary is the bastion of democracy, the guardian of the Constitution and the rule of law, and the protector of the peoples’ rights and freedoms;

WHEREAS, the Judiciary is critically indispensable in achieving and promoting national stability, progress, prosperity and peace through the rule of law; and

WHEREAS, the Judiciary can successfully perform the foregoing roles and duties only if it is independent, effective and efficient, accountable at all times, and worthy of the peoples’ trust and confidence; and it can do so through programs of judicial reform which institutionalize these qualities and values;

NOW, THEREFORE, be it resolved by the Twenty-Third Biennial Congress of the World Jurist Association to strongly recommend to all States, especially to the States represented in the World Jurist Association, that they actively and vigorously pursue judicial reform programs that promote and strengthen the independence and accountability of the Judiciary, enhance its effectiveness and efficiency, and preserve the peoples’ trust and confidence in it through the delivery of timely, equal, fair and impartial justice and the pursuit of excellence.

**Resolution on Alternative Dispute Resolution and Investment Dispute Protection**

WHEREAS, alternative dispute resolution has evolved to the point where it is now an accepted form of dispute resolution in the vast majority of nations; and

WHEREAS, alternative dispute resolution is particularly well suited for resolving disputes concerning international commercial and other private disputes; and

WHEREAS, the success of alternative dispute resolution is dependent upon the availability of persons who are properly trained in alternative dispute resolution; and

WHEREAS, the World Jurist Association fully supports the use of alternative dispute resolution;

NOW THEREFORE, the Twenty-Third Biennial Congress of the World Jurist Association calls upon all states to adopt the necessary procedures to ensure the continued evolution and use of alternative dispute resolution for resolving international commercial and other private disputes.

**Resolution on the Climate Change Impact**

RECOGNIZING the enormity of the challenge posed by climate change;

ACKNOWLEDGING the 2007 Report of the Intergovernmental Panel on Climate Change and the influential Stern Report, concluding that global atmospheric concentrations of greenhouse gases have significantly increased as a result of human activities;

NOTING that the March 2009 meeting in Copenhagen of scientists from 80 countries reached a consensus that the situation regarding carbon emissions is much worse than the projections contained in the 2007 Report;

REALIZING that the developing countries, especially coastal States and the least developed countries, will be severely impacted by climate change, with potentially catastrophic outcomes;

COGNIZANT of the fact that, notwithstanding the scientific consensus, the political will is lacking to take effective action now so as to avert the potential calamity and its impact upon future generations;

NOW THEREFORE the World Jurist Association at its Twenty-Third Biennial Congress on the Law of the World resolves that all countries, rich and poor and large and small, must demonstrate their resolve to take concerted, effective action to combat climate change. The first significant step toward accomplishing this goal is to reach a binding agreement at the December 2009 Copenhagen

*continued on page 12*



## Declarations and Resolutions *from page 11*

meeting, with firm commitments and specific time frames on emissions reductions beyond 2012, when the Kyoto Protocol expires; and

**CALLS UPON** all countries, both developed and developing, to assume full responsibility for addressing the challenge of climate change under the principle of "Common but Differentiated Responsibilities."

### Resolution on International Terrorism and Human Rights

**RECALLING** resolutions adopted at the WJA's prior Congresses on international terrorism, calling it a grave menace to humanity, which results in egregious violations of human rights and is an affront to world order,

**RECOGNIZING** that international terrorism constitutes a grave menace to humanity;

**STRESSING** the need not to compromise the protection of human rights while effectively combating terrorism;

**ACKNOWLEDGING** that the United Nations Security Council has taken steps to prevent and deter acts of terror violence;

**APPRECIATING** regional efforts such as those by the European Union and the Organization of American States to address the challenge posed by terrorism all over the world;

**REALIZING** that terrorism threatens all values that humanity cherishes and which lie at the very core of humankind;

**REAFFIRMING** that terrorism violates fundamental human rights and is indeed a crime against humanity;

**NOW THEREFORE** the World Jurist Association at its Twenty-Third Bien-

ennial Congress on the Law of the World, meeting in Kyiv, Ukraine, condemns all forms of international terrorism and urges all States to take effective measures to prevent and deter all terrorist activities and to bring to justice the perpetrators and their accomplices,

**URGES** the United Nations to expeditiously adopt a comprehensive Convention against Terrorism, and

**CALLS** upon all States to take concerted and effective regional, bilateral and unilateral actions to combat terrorism in all its forms.

### Resolution on Intellectual Property Protection and Enforcement

**WHEREAS**, protection of intellectual property rights is critical for fostering creativity and innovation;

**WHEREAS**, intellectual property piracy and counterfeiting result in serious economic consequences, jeopardize health and safety, finance organized crime and criminal activity, and limit incentives for creativity and innovation; and

**WHEREAS**, certain scholars suggest a need to broaden the scope of patent protection for medicines and pharmaceuticals in developing States while others support the adoption of unified patent standards worldwide;

**NOW, THEREFORE, BE IT RESOLVED** by the World Jurist Association at its Twenty-Third Biennial Congress on the Law of the World, meeting in Kyiv, Ukraine, that the WJA urges all States:

1. To take effective measures to strengthen intellectual property protection and enforcement in accordance with the rule of law; and
2. To engage in bilateral and multilateral dialog to achieve the goal

of harmonizing worldwide levels of patent protection by strengthening patent protection in developing countries in accordance with the rule of law.

### Resolution on the Protection of Rights of the Future Generations

**WHEREAS** the rights of living persons are protected by constitutions and laws of nations;

**WHEREAS** the rights of deceased persons are protected by civil and criminal laws (i.e. the recognition of last will or the protection of the reputation of a deceased person); and

**WHEREAS** the rights of future generations are inadequately protected;

**NOW THEREFORE**, the World Jurist Association reaffirms the decision taken in Budapest / Vienna and subsequently confirmed in Dublin/Belfast, that all Nations, and the European Union, should as a part of their constitutional law, adopt the following principles:

- The Nations of the World declare that they desire to protect the rights of future generations by preserving and improving the conditions that secure the sustainable existence of future generations and the right to provision of an adequate supply of non-restorable raw materials.
- This means that every generation has the duty to protect, preserve and pass on these legally protected rights as well as to deal responsibly with all kinds of waste and pollution and to avoid damage, which cannot be eliminated or which can only be eliminated with disproportional effort and/or expenditure.
- The Nations of the World are entrusted with the enforcement of these constitutional principles.