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DANS CE NUMÉRO

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Message de la Présidente

Je veux remercier tous ceux qui ont rempli le formulaire de bottin des membres inclus avec le dernier numéro du *Bulletin*. Pour ceux qui en avaient l'intention et ont oublié, ou qui ont perdu le formulaire, nous joignons une autre copie. Jusqu'à maintenant, nous avons reçu environ 75 réponses seulement. À moins que nous obtenions au moins un taux de réponse de 75% (environ 250-275), nous ne pourrions pas poursuivre cette initiative. Le bottin aurait plusieurs buts - non seulement comme outil de référence pour d'autres membres, mais également d'exemple utile de notre adhésion diverse quand nous cherchons des fonds supplémentaires auprès des ministères gouvernementaux et des cabinets juridiques. Je vous assure que nous ne vendrons pas notre liste d'adhésion mais notre liste d'adhésion peut aider à nous vendre!

Si nous ne recevons pas un nombre suffisant de réponses vers la fin d'août 2000 nous devons retarder la production du répertoire jusqu' à l'année de l'adhésion 2000-2001 et essayer de rassembler des formulaires de bottin pendant notre Congrès annuel en octobre 2000. Je vous encourage à prendre le temps de compléter le formulaire et à l'envoyer par télécopieur ou poste aussitôt que possible.

À propos de notre Congrès annuel, les préparatifs pour celui de cette année se poursuivent extraordinairement bien. Le comité organisateur du congrès, sous la conduite de Bruce Stockfish, a les choses bien en main et vous pouvez prévoir une expérience animée, instructive et collégiale du 26 au 28 octobre 2000 à Ottawa.

Le Congrès de cette année continuera la tradition du jeudi soir, vendredi et samedi au Chateau Laurier. D'un autre côté il franchira un nouveau pas en incluant un programme d'une journée entier le samedi. J'attends avec intérêt d'y voir un bon nombre entre vous et d'avoir l'occasion de discuter de l'excellent rapport sur le futur du CCDI qui est d'une importance principale pour la vitalité et la pertinence continuelles de notre organisation.

En conclusion, vous trouverez inclus avec ce numéro du *Bulletin* un formulaire de renouvellement d'adhésion pour l'année 2000-2001. Traditionnellement les mois d'été sont une période de 'revenu lent' pour le CCDI et ceux parmi vous qui renouvez votre adhésion un peu plus tôt qu'octobre nous

President's Message

I want to thank those of you who took the time to complete the directory form included with the last issue of the *Bulletin*. For those who meant to and forgot, or misplaced the form, we are enclosing a copy again. At this point we have only received approximately 75 responses. Unless we get at least a 75% response rate (approximately 250-275) we will not be able to pursue this initiative. The directory would serve a number of purposes - not only as a reference tool for other members, but also as a useful example of our diverse membership when we go out fund raising to government departments and law firms. We will not, I assure you, be selling our membership list, but our membership list can help to sell us!

If we do not receive a sufficient number of responses by the end of August 2000 however we will have to delay production of the Directory until the 2000-2001 membership year and try to collect Directory forms during our Annual Conference in October 2000. I encourage you to take the time to complete and fax or mail in the directory form now rather than later.

Speaking of our annual conference, the arrangements for this year's is proceeding extraordinarily well. The Conference Organizing Committee, under the able leadership of Bruce Stockfish, has matters well in hand and you can anticipate a lively, informative and collegial experience in Ottawa from October 26 to 28, 2000.

This year's Conference will in some ways continue tradition as we move back to the Thursday evening, Friday and Saturday format at the Chateau Laurier venue. In other ways it will break new ground by including a full day programme on the Saturday. I look forward to seeing many of you there and having the opportunity to discuss the excellent report on the future of the CCIL which is of key importance to the continuing vitality and relevance of our organization.

Finally, you will find included with this edition of the *Bulletin* a membership renewal form for the 2000-2001 membership year. Traditionally the summer months are a 'slow income' period for the CCIL and any of you who renew your membership a little earlier than October provide us a very useful financial

fournissent un coussin financier très utile. Même 20-30 renouvellements en avance peuvent aider à nous éviter de prendre de notre capital pour le 'financement de passerelle' jusqu'à ce que la majeure partie de nos renouvellements d'adhésion arrive plus tard cet été. Tous les paiements en avance seront automatiquement déduits cette automne de vos frais d'inscriptions du Congrès. <

cushion. Even 20-30 early renewals can help to avoid us dipping into our capital for 'bridge financing' until the bulk of our membership renewals come in. Any early payments will be automatically deducted this fall from your conference registration fees. <

Kim Carter
Présidente / President

En Bref

In Brief

CONSEIL DE L'EUROPE: CYBERCRIME

Le *Conseil de L'Europe* a rendu public le 27 avril un "projet de convention sur la cybercriminalité" visant à combattre, entre autres, le piratage informatique et les dispositifs qui le rendent possible. Une fois adopté, la convention sera le premier traité international à s'intéresser, sous l'angle du droit pénal et procédures criminelles, aux différents types de comportements délictueux, visant des systèmes, réseaux et données informatiques ainsi qu'à d'autres abus de même nature. Le texte, qui sera contraignant, a pour but d'harmoniser les législations nationales en la matière, d'intensifier les enquêtes et de permettre une coopération efficace entre les autorités des différents États. Il devrait être finalisé par un groupe d'experts d'ici décembre 2000 et le Comité des Ministres pourrait l'adopter et l'ouvrir à la signature à l'automne 2001. L'annonce du projet et le texte se trouve à:

<<http://conventions.coe.int/treaty/FR/cadprojets.htm>>

ICTFY REPORT ON NATO BOMBING

In early June, 2000 Carla Del Ponte, Chief Prosecutor for the *International Criminal Tribunal for the former Yugoslavia* (ICTY), took the extraordinary step of making public the final report of a Committee established on May 1999 to investigate whether NATO's 1999 bombing campaign against Yugoslavia violated international law, amounting perhaps even to crimes against humanity. The Committee did not address the question of whether NATO's use of force was illegal, leaving that issue to the *International Court of the Justice*. Rather, it focused on the acts committed during the campaign, and whether the allegations made against NATO

were credible and well-established enough to provide a sufficient basis to proceed with a criminal prosecution.

The Committee reviewed extensive documentation to address complaints involving 21 incidents during the bombing, covering such issues as environmental damage, the use of depleted uranium and cluster bombs, target selection, casualty figures and six specific incidents (the bombing of the Chinese Embassy, etc.).

Accepting as accurate information provided by NATO in public records and in interviews, the ICTY Committee found no basis in law to recommend that prosecution be commenced, concluding that more in-depth investigations would be unlikely to produce sufficient evidence to support a conviction. While acknowledging that NATO had made mistakes and had committed errors of judgment, these did not, in the opinion of the Committee, warrant criminal prosecution. On the basis of the Committee's recommendation, Carla Del Ponte announced to the UN Security Council on June 2nd that there would be no criminal investigation into any aspect of NATO's air campaign against Yugoslavia. The Committee's full report is at: <<http://www.un.org/icty/latest.htm>>.

ILO REPORT: "YOUR VOICE AT WORK"

The International Labour Organization has released the first 'global report', entitled "Your Voice at Work", required by the ILO *Declaration on Fundamental Rights and Principles at Work*. The report examines trends in relation to world-wide compliance with rights of freedom of association and collective bargaining, codified in two widely-ratified ILO Conventions (C87 & C98), and part of the eight ILO Conventions which constitute the core interna-

tional labor standards. The *Declaration* was adopted unanimously in 1998 in an effort to address the social dimensions of increasing trade liberalization by committing member states to the protection and promotion of labour rights guaranteed under the ILO Constitution.

This first issue of the global report, "Your Voice at Work", is one element of the "Follow-up" mechanism of the *Declaration*, according to which each year one of the four fundamental principles will be examined based on information provided in mandatory Member State reports. In future years, the report will cover forced labour, child labour and workplace discrimination. The full text of this year's report, as well as more information on the *Declaration*, is available in both French and English at: <<http://www.ilo.org>>.

DÉFENSEURS DES DROITS DE LA PERSONNE

La 56e session de la Commission des droits de l'homme des Nations Unies a adopté le 27 avril 2000 une résolution ayant pour but de développer un mécanisme de promotion et de protection des défenseurs des droits de l'homme. Avec cette initiative, la Commission a reconnu les dangers auxquels les défenseurs des droits de la personne font face fréquemment. La résolution prie le Secrétaire général de nommer un représentant spécial qui fera un rapport sur les moyens de renforcer la protection des défenseurs des droits de la personne. Parmi les 53 États membres de la Commission, 50 ont voté en faveur, tandis que 3 (Chine, Cuba et Rwanda) se sont abstenus. Le texte de la résolution est disponible à l'adresse:

<http://www.unhchr.ch/french/html/menu2/2/56chr/56res_fr.htm> (Rés. 2000/61).

PAPER: HUMAN RIGHTS AND GLOBALIZATION

The Montreal-based *International Centre for Human Rights and Democratic Development* (ICHRDD) has released a paper by Robert Howse and Makau Mutua entitled "Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization". Professors Howse and Mutua argue that trade and human rights need not be in conflict so long as the trade regime is interpreted and applied in a manner consistent with human rights obligations.

According to the authors, while GATT/WTO rules were designed to recognize non-trade public values,

in particular through GATT Article XX, these principles have been given a very limited interpretation due to the relative isolation of the trade institutions. After a survey of international human rights law and of the operation of the trading regime, the paper concludes that the interpretation of the trade rules, largely based on treaty law, should adhere more to the hierarchy of norms in international law, out of a recognition that the same human values that underpin human rights norms are fundamental to free trade itself. The full text of the paper is available in both French and English at: <<http://www.ichrdd.ca/>>.

SITES INTERNET/WEB SITES

Une carrière internationale

L'École du Barreau du Québec offre une page sur son site Internet avec des ressources pour ceux qui veulent faire leur stage au niveau international en vue de commencer une carrière internationale. La page contient des liens aux organisations (gouvernementale ou non-gouvernementales) qui offrent des stages, des liens aux institutions qui offrent les programmes d'études supérieures, et des liens à d'autres sites qui offrent des conseils sur comment commencer une carrière internationale. Le site se trouve à:

<<http://barreau.qc.ca/barreau/ecole/stageinternational.html>>.

The Avalon Project

Lodged at Yale Law School, the Avalon Project contains in electronic form many major legal, economic and diplomatic texts from the last five hundred years. Organized into thematic collections (Slavery Statutes, Nuremberg Wars Crimes Trials, Western European Security, etc.), the documents can also be viewed chronologically, in hundred year segments. The collection includes documents such as the 1479 *Alcacovas Treaty* between Portugal and Spain, through to the 1998 *Wye River Memorandum* between the Palestinians and the Israelis. While the Avalon Project tends to focus more on historical documents, a pragmatic strategy given the proliferation of treaties in recent years, and the US legal and diplomatic history is, for obvious reasons, over-represented, it still provides a wealth of international legal documents that are of more than just historical interest. The site can be reached at:

<<http://elsinore.cis.yale.edu/lawweb/avalon/avalon.htm>>.

(continued on page 18 - suite page 18)

Kyrgyzstan, the WTO and the Rule of Law: Some reflections on delivering legal technical assistance in a transition economy

By J. Anthony VanDuzer*

In 1999, I spent a week in Bishkek, Kyrgyzstan working on a CIDA project being delivered there by the Canadian law firm Macleod Dixon, and KPMG. Our team consisted of a partner from Macleod Dixon, a senior trade expert from KPMG and myself. The main purpose of our visit was to present the third module in a series of seminars on the World Trade Organization ("WTO"), which Kyrgyzstan had just joined, and on competition law to Kyrgyz government officials. We also had discussions with the head of the Kyrgyz competition authority.

Kyrgyzstan is a remote Central Asian country of 4.5 million people which boasts spectacular geography, dominated by the Tian Shan, Pamir and Alay mountain ranges. The average elevation is 2,750 metres. This former Soviet republic is surrounded by Kazakstan, Uzbekistan, Tajikistan and China. It took me two days to get there from Ottawa, including stops in Moscow and Almaty, Kazakstan and a hair-raising drive in a rented car across the Kazak/Kyrgyz border.

Kyrgyzstan is also a poor country. In 1996, the Gross Domestic Product per capita was US\$1290, about the same as Bangladesh. Economic development has accelerated recently. GDP per capital in 1999 was estimated as US\$2,200.

Kyrgyzstan is the only country in Central Asia which is a member of the WTO. It completed the accession process in record time (20 months start to finish¹) assisted by strong political leadership from President Akaev and a substantial injection of

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American assistance through the Agency for International Development, which paid for a team from Booz-Allen & Hamilton, the US consulting firm, to set up shop in Bishkek and assist in drafting Kyrgyzstan's accession documentation. Kyrgyzstan was able to accede so quickly because the documentation was well done, and, more importantly, because the level of the obligation it offered to undertake was very high, exceeding the commitments of Canada, the United States and the European Union in some respects.

In order to implement Kyrgyzstan's commitments enormous changes to many aspects of the existing regime and, in some cases, the development of new regulatory structures were required. Accession had other implications as well. The neighbouring states in Central Asia, some of which had agreed to set up a free trade zone with Kyrgyzstan, became concerned that Kyrgyzstan would become an entry point for foreign goods seeking to avoid their national tariffs and so increased their border barriers to Kyrgyz goods. As well, states in the region felt that Kyrgyzstan had raised the bar for their own accession to the WTO with the high quality and unqualified nature of its commitments and Kyrgyzstan's relations with its neighbours deteriorated. Uzbekistan, for example, called for early payment for certain wheat shipments and Kazakstan refused to make promised deliveries of coal. In short order, WTO accession helped to precipitate an economic crisis in Kyrgyzstan. We were warmly received by government officials who were clearly anxious to find out more about these new obligations they had assumed.

My visit vividly illustrated for me both the frustrations and rewards of international technical assistance work of this kind for Canadian lawyers. As in most foreign work, my visit provided an opportunity to look in at a society and economy much different from my own from a privileged vantage point, forcing me to reflect on the assumptions and values that I bring to bear in seeking to understand the international trade regime. It is also very

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¹ Consider, by comparison, China which has been seeking membership since 1986 and Russia which first applied in 1993. Even other small transition economies have taken much longer. Latvia, for example, was in the accession process for more than 5 years, before becoming a member in 1999.

rewarding to be able to provide people facing enormous obstacles to development with some of the basic tools needed to develop law and policy in a way that implements their international obligations in a manner best adapted to their own interests. At the same time, the benefits of such general training sessions, while significant, are necessarily limited, not because of deficiencies in program design, nor, let me say immodestly, the presenters, but rather due to the magnitude of the challenges faced by a developing country like Kyrgyzstan, endeavouring to engineer a transition to a market-based economy.

We lawyers tend to view issues such as the implementation of international trade obligations as essentially a technical exercise of giving effect to the tradeoffs negotiated at the bargaining table. In a transition economy, however, successful implementation of discrete commitments is necessarily part of a broader, longer term process of political transformation and institutional development. As well, implementation of trade obligations often has implications in a transition economy which are quite different from those in a developed country like Canada.

Consider Kyrgyzstan's commitments to reduce its tariffs. Because the Kyrgyz income tax system is not effective, tariffs are a substantial source of government revenue. Tariff reduction thus threatens the government's already limited capacity to deliver programs. It may also cause ripple effects which deform government behaviour. For example, since developing an effective income tax system is a long term project and reducing government programs is politically unpopular, Kyrgyzstan has responded to budgetary constraint by forcing some government agencies, such as the competition authority, to fund themselves. Such a move has been resisted in Canada because of the skewed enforcement priorities it may set up.

As well, implementation of WTO disciplines in a developing transition economy, such as Kyrgyzstan, occurs in an environment characterized by hostility which is more severe and deep-rooted than in Canada. Sites of opposition have multiplied in all WTO member countries as WTO disciplines reach ever farther into spheres formerly considered the exclusive preserve of domestic policy making, such as technical, health and safety standards. More and more government ministries and departments with no knowledge of international trade are finding

themselves subject to what they may perceive as a set of complex new constraints on their ability to serve their domestic constituencies. Bureaucratic resistance is a much more substantial impediment to successful implementation in countries like Kyrgyzstan which have limited experience with rules for a market-based economy and no experience whatsoever with binding comprehensive trade rules like those imposed by the WTO.

The expanding scope of international trade rules means that groups in civil society in WTO member states are more directly affected by their application and are increasingly demanding that their concerns be taken into account. This is a significant issue for Canada. By contrast, in most transition economies, non-governmental groups are not well organized and democratic accountability is far from robust, so the impact of many non-governmental actors on the development and implementation of trade policy is limited. While this means that opposition to trade liberalization may be muted, it also means that groups benefiting from liberalized trade, like consumers, will offer less support. As well, there may be strong domestic business interests who may perceive themselves as adversely affected and have sufficient political power to throw up significant roadblocks to trade liberalization initiatives.²

Implementation of WTO rules is not easy in countries which have weak rule of law traditions. The WTO is a rules-based system. Most transition economies are not and Kyrgyzstan is no exception.³ It is difficult to over-estimate the challenges this poses for successful implementation of WTO obligations. Often the most basic requirements are not present. For example, there is no authoritative, generally available translation of the World Trade Organization agreements in Russian, and, at the time of our visit, not even an unofficial translation in Kyrgyz. Institutions that we take for granted in Canada, such as an independent judiciary and legal profession, law schools and a culture of respect for and compliance with legal rules, either do not exist or are nascent. Instead, legal regimes in transition economies are

² W. E. Kovacs, "Getting Started: Creating New Competition Policy Institutions in Transition Economies," (1997) 23 Brooklyn J. Int'l L. J. 403.

³ Table 2.1: Progress in Transition in Eastern Europe, Baltic States, and CIS in TRANSITION REPORT FOR 1998 (London: European Bank for Reconstruction and Development, 1998).

characterized by significant bureaucratic discretion, often exercised by relatively low level officials, a lack of transparency and, as a consequence of both, widespread corruption.⁴ Marketplace framework laws dealing with property rights, intellectual property, contracts, corporations, securities markets and competition all must be created or enhanced. In these circumstances, successful implementation of WTO commitments is necessarily much slower and more difficult.

Perhaps the single question asked by participants in our seminars which best illustrated the enormous gulf between the Canadian and Kyrgyz legal and political systems was "how do you ensure that government does not interfere in the market?" In struggling to answer this practical but profoundly difficult question it was necessary to explain that Canadian government policy is determined by our pluralist, democratic process; there are no direct restrictions on the government's ability to interfere in the market. We went on to talk about the how there are nevertheless constraints resulting from an enduring consensus on the overall desirability of a market-based economy and Canadian laws and institutions which support the operation of the market.

In Kyrgyzstan the situation is dramatically different. The political commitment to the market is both new and fragile. As noted above, institutional support is lacking. In order to establish and support the operation of a market economy, Kyrgyzstan needs to reform public, educational and judicial institutions, train officials, elected representatives, judges, teachers, private sector actors, encourage the organization of civil society groups with a stake in the market, make new laws and create capacity within government to support the operation of the market. Just one example of this kind of capacity is an independent competition authority, which serves as a repository of expertise on the operation of markets and is mandated to advocate for market based reform in the regulatory process. Such an advocacy role will

be much more important than enforcing domestic competition law in the early stages of transition.⁵

My experience in Kyrgyzstan made clear to me the extent to which successful implementation of international trade obligations in transition economies is a complex process requiring the development of a great deal of institutional infrastructure that Canadians take for granted. As a consequence, Canadian lawyers providing technical assistance must

"Because foreign advisors can never know the local context sufficiently, ultimately the goal of technical assistance must be the development of local capacity and expertise"

be able to provide much more than a technical interpretation of international trade obligations. We must try to be sensitive to the local context in which laws will operate and the implications that local conditions have for what is required for successful implementation. Because foreign advisors can never know the local context sufficiently, ultimately the goal of technical assistance must be the development of local capacity and expertise. As well, if it is to be truly effective lawyers' contribution to implementation must be well integrated with and supplemented

by the contributions of other professionals, including economists and an array of experts in public and private sector governance.

Nevertheless, while there are limitations on what we can do as lawyers the critical link between the development of legal institutions and the rule of law and the success of trade and investment liberalization is increasingly emphasized by leading economists advising on the process of transition, such as Harvard's Jeffrey Sachs.⁶ Professor Sachs has even gone so far as to suggest that what transition economies really need is more lawyers, not more economists. With this one can readily agree. Lawyers are able to deliver essential pieces of the puzzle that transition economies are desperately seeking to assemble. Our role includes, but is not limited to, seminars on legal obligations. It extends advice on specific legal reform and to assisting with the development of an array of legal institutions without which market economies cannot function. <

⁴ In the 1999 Transparency International Corruption Perceptions Index, Kyrgyzstan was ranked 87th of 99 countries.

⁵ This is Kovacs' view (see *supra* note 2 at 439-440). See also A. E. Rodriguez & M. B. Coate, "Competition Policy in Transition Economies: The Role of Competition Advocacy," (1997) 23 Brooklyn J. Int'l L. 365.

⁶ J. D. Sachs, "Globalization and the Rule of Law" (1998) 4 Yale L. School Occasional Papers, 2d series.

Conference 2000: "Looking Ahead: International Law in the 21st Century"

This is the time of year that preparations for the next CCIL Conference and Annual General Meeting are well under way. After careful consideration, and with input from the membership, the Executive Committee decided to move the Conference back to the Château Laurier with an expanded format. The Conference will start on Thursday evening, October 26 with an opening roundtable and cocktail reception, continue on Friday with a full and interesting day leading up to the Banquet at the NAC on Friday evening, and conclude late Saturday afternoon. With the career forum and a high tech panel scheduled for Saturday, we are hoping to encourage greater student and private practitioner participation.

Another exciting addition will be the participation of panelists of the Trilateral Conference (Japanese, US and Canadian), who will be completing their conference just prior to the CCIL Conference. Please check the CCIL website for updates on panel titles and speakers. The application form, including hotel information will follow. Please contact our Officer Director, Sonya Nigam, if you would like extra copies of the poster for posting or distributing. <

Congrès 2000: « Tournés vers l'avenir: Le droit international au 21^{ème} siècle »

C'est la période de l'année où les préparatifs pour le prochain Congrès annuel et l'assemblée générale sont bien en cours. Après considération, et des consultations avec des membres, le Comité exécutif a décidé d'à nouveau faire le Congrès au Château Laurier avec un format élargi. Le Congrès commencera jeudi soir, le 26 octobre avec une table ronde et un cocktail, et continuera vendredi avec une journée entière et intéressante amenant au banquet au NAC vendredi soir, et se terminera samedi en fin après-midi. Le forum de carrière et l'atelier sur la haute technologie étant programmé pour samedi, nous espérons encourager une plus grande participation des étudiants et avocats privés.

Une autre addition intéressante sera la participation des membres des panels du Congrès trilatéral (Japonais, USA et Canadien), qui termineront leur Congrès juste avant celui du CCDI. Veuillez consulter le site Internet du CCDI pour voir les mises à jour des titres et des participants aux panels. Le formulaire d'inscription, ainsi que des renseignements sur l'hôtel suivront. Veuillez contacter notre Directrice du bureau, Sonya Nigam, si vous voulez des copies supplémentaires de l'affiche pour mettre au mur ou distribuer. <

Bruce Stockfish

Chair, Conference Organizing Committee/Président, Comité organisateur du Congrès

Trilateral Conference 2000

The third ASIL, JAIL, CCIL Trilateral Conference will be held in Ottawa immediately preceding the CCIL Annual Conference, beginning on the afternoon of Wednesday, October 25 and continuing throughout the day on Thursday, October 26, 2000. The panel themes and Canadian participants include:

Use of force

- John Currie, University of Ottawa
- Maurice Copithorne, University of B.C.

International trade

- Donald McRae, University of Ottawa
- Adel Blackette, McGill University

Law of the sea

- Phillip Saunders, Dalhousie University

Congrès trilatéral 2000

Transnational litigation

- Scott Fairley, Donahue & Partners

Domestic implementation of international law

- Hugh Kindred, Dalhousie University
- Jutta Brunée, University of B.C.

The members of the American and Japanese delegations will be confirmed later in the summer. All Trilateral Conference participants will also be invited to participate in CCIL Conference discussions.

Anyone interested in attending the Trilateral Conference should contact Armand de Mestral at McGill University by fax at (514) 398-3233 or e-mail at <demestral@falaw.lan.mcgill.ca>. <

• **WOMEN AND INTERNATIONAL LAW INTEREST GROUP** •
**The Organization for Security and Cooperation in Europe,
 Human Rights and Gender Issues**

By Merja Pentikäinen*

International lawyers tend to forget - or to ignore - the Organization for Security and Cooperation in Europe (OSCE) when international human rights are discussed. The reason for this undoubtedly resides in the fact that this pan-European regional arrangement, its structures and functions, are truly not so easy to grasp. The OSCE has no statute like the United Nations has its Charter which could be consulted in order to find out, for example, the mandate of the organisation the nature of its organs.

The foundation of the OSCE was laid down in 1975 when the Helsinki Final Act was adopted in the meeting of the Heads of State or government of the Conference on Security and Cooperation in Europe (CSCE) in the capital of Finland. The Helsinki Final Act is still the founding document of this forum of international cooperation which has been developed by the decisions of the participating States made over the years and laid down in the subsequent CSCE/OSCE documents. Since the CSCE Follow-up Meeting held in 1986 - 1989 in Vienna, this inter-state forum has developed from a conference into a forum with permanent structures and institutions. To underline this very fact the participating States changed the name of the CSCE into the OSCE as of the beginning of 1995. This renaming, however, altered neither the character of the forum nor that of the OSCE instruments.

The Human Dimension of the OSCE

Within the OSCE, human rights and fundamental freedoms form part of the so-called human dimension of the OSCE. The human dimension is a broad concept also covering issues related to human contacts, democracy, democratic institutions, the rule of law, and the protection of persons belonging to national minorities. Most of the human rights and fundamental freedoms incorporated in the OSCE documents are comparable to civil and political rights found in international human rights conventions.

References to economic, social and cultural rights in the OSCE documents are much more rare, but they do also exist, mainly in the form of general references to these rights or to international conventions including them.

Among the characteristics of the OSCE commitments, the human dimension commitments included, is their non-legal nature: they are only binding politically upon the participating States. From the point of view of the OSCE States the situation as regards human rights can be described as to the extent the OSCE commitments reproduce the (legal) obligations deriving from their adherence to international human rights treaties the OSCE commitments merely underline the political commitment of the states to the implementation of these rights and freedoms. In those situations, however, when the OSCE commitments go beyond the treaty-based human rights obligations of the OSCE States, the OSCE commitments are additional norms of state behaviour to be taken into account. By inserting references to other international instruments relevant to human rights, including human rights treaties, in the OSCE documents the OSCE States have confirmed their political commitment to the implementation of the provisions of those other instruments.

A unique feature of the OSCE commitments is their 'universality' in the sense that the OSCE commitments apply in their entirety and equally in each and all of the OSCE States. This derives from the fact that in practice all political OSCE documents have been accepted by consensus without any 'opting out' comparable to filing reservations to international treaties. Furthermore, due to the fact that the OSCE is essentially a security organisation, i.e., a forum geared to the consideration of issues relevant to peace and security in the OSCE area, also matters of human rights are primarily viewed from this perspective, i.e. in security terms. Within the so-called comprehensive concept of security adopted by the OSCE the politico-military dimension, the human dimension

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and the economic dimension are linked to peace, security and prosperity of states.⁷

Gender Issues at the OSCE

The human dimension commitments of the OSCE underscore ensuring equal rights of men and women and applying all human dimension commitments in a non-discriminatory manner, e.g., as regards sex. The OSCE documents also include some commitments focussing particularly on women. These commitments include references to the *UN Convention on the Elimination of All Forms of Discrimination against Women* and to the commitment to implement the *UN Nairobi Forward-looking Strategies for the Advancement of Women*. Furthermore, the OSCE States have affirmed that their goal is to achieve not only *de jure* but also *de facto* equality of opportunity between men and women, to ensure full economic opportunity for women, equal access to education and training, and measures to facilitate combining employment with family responsibilities for female and male workers. There are also commitments to promote equal opportunities for full participation by women in all aspects of political and public life, in the decision-making processes and in international cooperation, and to seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women.⁸

Although aspects having a bearing upon women have been on the agenda of the OSCE (also at the time of the CSCE) in the way described, it was not until the autumn of 1997, thus much later than in a number of other international organisations, when women and their concerns in the OSCE area were given special attention within the activities of the organisation. This special attention materialised in the form of a seminar, the *Human Dimension Seminar on the Promotion of Women's Participation*

⁷ For more about the background, contents, and significance of the human dimension of the OSCE, see, e.g., Merja Pentikäinen, "The Role of the Human Dimension of the OSCE in Conflict Prevention and Crisis Management," in *The OSCE in the Maintenance of Peace and Security. Conflict Prevention, Crisis Management and Peaceful Settlement of Disputes*, Michael Bothe, Natalino Ronzitti, and Allan Rosas (eds.), Kluwer Law International, The Netherlands 1997, pp. 83 - 122.

⁸ See particularly Para. 40 of the Moscow Document adopted at the meeting of the *Conference on the Human Dimension of the CSCE* in 1991.

in *Society*, organised by the Office for Democratic Institutions and Human Rights (ODIHR) in October 1997 in Warsaw. This seminar considered a number of issues concerning the situation and rights of women, including their participation in society and violence against women. The seminar also touched upon the role of women in conflict prevention and resolution. These aspects, and the recommendations made at the seminar, were also brought up in the *Implementation Meeting on Human Dimension Issues of the OSCE* organised in November 1997. In this implementation meeting the agenda item "equality of opportunity for men and women" was for the first time placed on the agenda of an OSCE meeting reviewing the states' compliance with OSCE commitments. At that meeting several speakers underlined the need for greater emphasis on gender-related issues and gender mainstreaming in the OSCE activities and policies. In addition, the OSCE was called to continue the consideration of the various issues relating to the rights of women. The need to consider the role of women in building and maintaining democracy, and thereby also in strengthening stability and peace, was also brought up again.

As a follow-up to the 1997 seminar the Permanent Council, which is the core political (inter-governmental) body of the OSCE consisting of the representatives of the participating States and convening weekly in Vienna, arranged an informal meeting on women's issues in April 1998. In June 1999 the ODIHR organised the *Supplementary Human Dimension Implementation Meeting on Gender Issues in Vienna*. Some of the key problems facing women in the OSCE area identified in this meeting were: discrimination in the labour market; trauma, in particular rape, sexual violence and increased domestic violence during and after conflict; failure to take women's needs into account in reconstruction efforts, including the problems of unequal access to loans; under-representation in national, regional and local decision-making bodies; and under-representation of women within the OSCE itself.

The Gender Unit set up in connection with the ODIHR has projects on the human rights of women and works on gender mainstreaming of ODIHR and OSCE activities. These projects focus on three main areas. First, advancing political participation of women and access to decision-making through

training on leadership and advocacy skills. Second, raising awareness of and providing training on commitments to equality and women's human rights standards. Third, projects are being developed to empower women and combat violence against women. In May 1998 the Secretary General of the OSCE appointed the Senior Diplomatic Adviser to act as the Focal Point for Gender Issues to work at the OSCE Secretariat with the tasks of enhancing awareness of gender issues in the Secretariat and in OSCE field operations, monitoring the opportunities of women in the OSCE, and serving as a contact person on gender issues for other international organisations and for NGOs.

For more information on the OSCE, see <<http://www.osce.org>>. Particularly on the ODIHR, see <<http://www.osce.odihr.org>> <

La magistrature en deuil

Le Canada a récemment perdu un très grand juriste en droit international. Le juge Jules Deschênes est mort à Laval, Québec, à l'âge de 76 ans. Admis au Barreau du Québec en 1946, il a été juge à la Cour d'appel du Québec puis a occupé le poste de juge en chef de la Cour supérieure du Québec de 1973 à 1983.



Il se sera ensuite illustré notamment comme président de la Commission d'enquête sur les criminels de guerre entre 1985 et 1986. Le rapport qui a suivi n'est pas resté lettre morte puisque en 1987 le gouvernement canadien a annoncé une politique concernant la présence de criminels de guerre au Canada. En 1993, M. Deschênes a été élu juge au Tribunal pénal international pour l'ex-Yougoslavie par l'Assemblée générale des Nations Unies. Il a occupé ce poste jusqu'en 1997.

Cet éminent juriste au sens aigu de la justice a été un membre actif du Conseil canadien de droit international et tout récemment encore, il nous a fait parvenir des suggestions pour l'avenir du Conseil. Le juge Deschênes demeurera pour nous une source d'inspiration. Nous désirons ici saluer sa mémoire. (J.L.) <

Profile: Human Rights Internet

Founded in 1976, Human Rights Internet (HRI) is a world leader in the exchange of information within the global non-governmental community working for the advancement of human rights. From its headquarters in Ottawa, HRI supports the work of this community by communicating through phone, fax, mail and the internet with more than 5,000 organizations and individuals around the world. It also works to educate governmental and intergovernmental agencies and officials and other actors in the public and private sphere, on human rights issues and the role of civil society.

HRI accomplishes these goals by:

- Facilitating the application of new technologies towards the furtherance of human rights through transferring knowledge and expertise particularly to Southern non-governmental organization (NGOs) and other civil society organizations;
- Producing and providing access to human rights databases and its unique and comprehensive documentation centre;
- Carrying out human rights research and disseminating the results to concerned institutions and activists;
- Producing human rights resources including the quarterly *Human Rights Tribune*, annual publications and directories in digital, hard copy and microfiche formats and making them available to NGOs and international institutions;
- Fostering networking and cooperation among NGOs, as well as other civil society organizations, to integrate human rights with social and sustainable development issues; Strengthening civil society and NGO access and participation to international fora.
- Supporting the role of NGOs in the promotion of civil society and assisting governmental and intergovernmental organizations in the application of good governance practices and the protection of human rights through technical assistance, training and educational programs.

For more information, contact Human Rights Internet at (613) 789-7407, or consult its web page at <<http://www.hri.ca>>. <

News from Abroad:

By Salim Fakirani*

My interest in East Timor grew out of my work with the *Canadian Lawyers Association for International Human Rights* (CLAHR) concerning the right to self-determination in Western Sahara. Through CLAHR, I participated in a study mission to the Saharawi refugee camps in Algiers, but this was my first time working as an election monitor. I was an observer with the *International Federation for East Timor – Observation Project* (IFET-OP).

I arrived in the capital, Dili, on August 23th after spending approximately 24 hours in the air, with stops in Vancouver, Osaka, and Bali. I settled into a house in a standard Dili suburb. Our IFET-OP Dili Team was truly international with representatives from Australia, Canada, Finland, Japan, the Netherlands and the United States. There was little time to get to know each other as the work began immediately. We were mandated to report incidents of voting irregularities, intimidation, and/or violence directly to the *United Nations Mission for East Timor* (UNAMET).

The week prior to voting day was exhausting for all members of the Dili Team. We witnessed political rallies of both the CNRT (East Timor's independence movement) and the Pro-Autonomy forces, conducted pre-visits to various polling stations, spoke with church, civilian, and police leaders, attended UN Briefings, and visited the schools and churches where people who had fled their homes sought protection.

We were told to prepare for the worse as voting day approached. It was widely known that the Pro-Indonesia militia were prepared to leave their mark, should the people of Dili choose independence. The Dili Team went to bed on August 29th not really knowing what the 30th would bring. There was no way of knowing if East Timor could handle a referendum. There was the chance that road blocks would be put up to prevent voters from casting their ballots. There was a chance of voting irregularities skewing the results. There was a chance that the UN and local staff would not have the capacity to process the number of voters in the 200 polling stations. But

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Election Monitoring in East Timor

most seriously, there was a real fear that violence would erupt preventing democracy's emergence.



The author at a Church-run safe haven in Dili

On voting day, we arrived at our first poll shortly after 5:00 a.m. To our amazement, we were not the first to arrive. When our car pulled up to the small cream coloured building a line-up of voters was already forming: East Timorese waiting patiently for democracy to begin in their homeland. That first polling station we visited, where voters had lined up quietly in the morning hours was a sign of how voting day would proceed. An astonishing turnout of almost 100 percent of eligible voters moved through the polling stations with few incidents. Some voters had walked three to four hours to cast their ballot but were uncomplaining. We did see men brandishing machetes – a sure sign of intimidation -- but they surrendered their knives when asked. Police too, responded to our request through the District Electoral Officer that they respect the distance from the polling stations. Voting concluded peacefully by early afternoon, much to our surprise and relief. A remarkable 98 percent of East Timorese voted. Of those that voted, 78.5 percent rejected an arrangement of autonomy integrated within Indonesia.

The referendum was over, but the trouble was just beginning. Pro-integrationist forces stepped-up intimidation of citizens and acts of violence throughout the territory. Tension was ever increasing. I was fortunate to have made arrangements to leave Dili by boat soon after the vote. Flights out of the region were overbooked and difficult to confirm.

It wasn't until I reached Bali on my trip back to Ottawa that I heard of how wide-spread the violence

in East Timor had grown. The campaign of violence, looting and arson by pro-integrationist militia's with the support of elements of the Indonesian security forces, ("Operation Clean Sweep") created a humanitarian crisis with many East Timorese killed and thousands seeking refuge in West Timor. The main cities and remote towns and villages all were laid waste in a street by street campaign. <

University of Calgary Hosts Jessup 2000 Competition

The University of Calgary Faculty of Law was very pleased to have the privilege of hosting the Canadian National Division of the 2000 Philip C. Jessup International Law Moot Court Competition from February 17 to 19, 2000. Jennifer Koshan, a member of the Canadian championship team of 1988, served as the National Administrator of the competition, and was ably assisted by Tammy Donovan and Tracy Schaeffler.

The Canadian Rounds of the Jessup opened with a lecture by The Honourable Lloyd Axworthy, federal Minister of Foreign Affairs and International Trade, who spoke on Canada's Human Security Policy and International Law. This lecture was part of the Faculty of Law's International Law Week, which culminated with the Jessup competition. International Law Week also included panel discussions on International Resources and Environmental Law, and International Health and Human Rights Law, a topic linked to this year's Jessup problem.

Teams from 17 law schools competed in the Canadian Rounds of the Jessup competition this year, travelling to Calgary from Fredericton, Halifax, Montreal, Ottawa, Windsor, Kingston, Toronto, London, Winnipeg, Saskatoon, Edmonton, Vancouver and Victoria. The competition was held at the law school on Friday, February 18, and at the courthouses downtown on Saturday, February 19

The 2000 Jessup problem was entitled "The Case Concerning Vaccine Trials: The Conduct of International Pharmaceutical Trials", and involved jurisdictional issues arising in the context of international vaccine trials.

Over 85 judges presided over the Canadian Rounds of the Jessup competition, including members of the judiciary, academics, and practitioners. Chief Justice Alex Hickman of the Newfoundland Supreme Court, and Warren Allmand, P.C., Q.C., President of the *International Centre for Human Rights and Democratic Development*, served as Presidents of the final benches. Of special note, Chief Justice Hickman announced his retirement from both the bench and the Jessup competition this year, after 20 years of participating. Professor Kathleen Mahoney of the University of Calgary Faculty of Law presented Chief Justice Hickman with a gift at the awards banquet to acknowledge his special contribution to the competition.

At the awards banquet, Colonel Kim Carter, President of the CCIL, presented awards to the first and second place Canadian teams, both of which went on to compete in the International Rounds of the Jessup in Washington, D.C. in April. Dalhousie University won the Maxwell Cohen Cup as Canadian National Champion team, and McGill University won the Gerald Fitzgerald Award as the Canadian National Runner-Up team. Professor Donat Pharand presented the award bearing his name to the third place team, The University of Calgary. The University of Western Ontario took home the Charles Bourne Award for Fourth Place Team, and the University of Victoria won the R. St. J. Macdonald Award for First Place Memorial. Winners of the PAJLO / POLAJ Oralist prizes were Sonya Vichnevetskaia of l' Université d'Ottawa (Droit Civil), meilleure plaideuse en langue française, and Patti Shedden of the University of Calgary, best English-language oralist.

- Jessup Results -

- 1st: Dalhousie University
 - 2nd: McGill University
 - 3rd: University of Calgary
 - 4th: University of Western Ontario
 - 1st place Memorials:
University of Victoria
-

At the International Rounds in Washington, both Dalhousie and McGill won three and lost one, but were eliminated before the final 16 team knock-out rounds. The memorials from McGill were judged the 3rd best. In the final result, Melbourne, Australia prevailed over the team from Venezuela.

While the heart of the Jessup competition could be said to be the hard work and intellectual rigour of the student participants, coaches, faculty advisors, and judges, the pacemakers of the competition must also be recognized. University of Calgary law students and alumni made tremendous contributions of time in working as bailiffs, judge assistants, score-keepers, and social coordinators during the event, ensuring that the competition ran smoothly, efficiently, and

with spirit. The competition was also made possible through the generous financial support of law firms, government, and publishers from across the country: Burnet, Duckworth & Palmer, Davies, Ward & Beck, Macleod Dixon, Fasken Martineau DuMoulin, Ogilvie Renault, Osler, Hoskin & Harcourt, Torys, the Alberta Law Foundation, Heritage Canada, Department of Justice National Program for the Integration of Both Official Languages in the Administration of Justice (POLAJ / PAJLO), Butterworths Canada Ltd., Canada Law Book Inc., Carswell Thomson Professional Publishing, and Wilson & Lafleur Ltée.

The Canadian Rounds of the 2001 Jessup will be hosted by the University of New Brunswick. <

• INTERNATIONAL ENVIRONMENTAL LAW INTEREST GROUP •
Key International Environmental Negotiations And Meetings: 2000

1. Recent Negotiating Sessions and Meetings

- 8th Session of the Commission on Sustainable Development (**April 24-May 5**)
- Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity (**May 15-26**)
- Special Session of the UN Environment Programme (UNEP) Governing Council (**May 29-31**)
- Canada-U.S. Air Quality Agreement, ozone annex negotiations (**June 14-15**)

2. Upcoming Negotiating Sessions and Meetings

- 22nd Consultative Meeting of the Parties to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (**September 18-22**)
- Arctic Council Ministerial Meeting (**October 10-13**)
- 7th Meeting of the Intergovernmental Negotiating Committee for the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (**October 30 - November 4**)
- Forum III, Intergovernmental Forum on Chemical Safety (**October 14-20**)

- First Meeting of the UNEP Working Group of Experts on Compliance and Enforcement of International Conventions (**November**)
- Sixth Meeting of the Conference of the Parties to the Framework Convention on Climate Change (**November 13-24**)
- Fifth Meeting of the Intergovernmental Negotiating Committee for a Global Convention on Persistent Organic Pollutants (POPs) (**December 4-9**)
- Twelfth Meeting of the Parties to the Montreal Protocol (**December 11-15**)
- First meeting of the Intergovernmental Committee on the Cartagena Protocol on Biosafety (**December 15**)

3. Recently Concluded Treaties

- Liability Protocol to the Basel Convention on the Transboundary Movement of Hazardous Wastes and Their Disposal (**adopted December 10, 1999**)
- Cartagena Protocol on Biosafety (**adopted January 29, 2000**)

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COMPLIANCE MATTERS

Recent Developments Relating to Compliance under Multilateral Treaties in the Area of Disarmament and International Security

• THE MARKLAND GROUP •

I. LEGALITY OF USE OF FORCE – THE CASES OF YUGOSLAVIA V. NATO COUNTRIES

Summary by Sonya Nigam, LL.M.*

On March 29, 1999 NATO commenced air strikes against Yugoslavia with a view to stopping the Yugoslav army's actions of "ethnic cleansing" against the Kosovar-Albanians in Kosovo.

On April 29, 1999 the Federal Republic of Yugoslavia instituted proceedings before the International Court of Justice against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States of America, all member states of NATO. Yugoslavia sought to hold these countries responsible for violating their obligation not to use force. It also made a request for provisional measures, asking the Court to order these countries to "cease immediately its acts of use of force" and to "refrain from any act of threat or use of force" against Yugoslavia.

In its declaration recognizing the jurisdiction of the Court, Yugoslavia limited its consent to "disputes arising or which may arise after the signature of the present Declaration". The declaration was signed on April 25, 1999.

Yugoslavia invoked 4 bases of jurisdiction:

- Article 36, para. 2 of the ICJ Statute in the case against Belgium, Canada, the Netherlands, Portugal, Spain and the United Kingdom;
- Article 38, para. 5 of the Rules of Court in the case against France, Germany, Italy and the United States;
- Article IX of the Genocide Convention in the cases against all ten respondents; and
- two treaties from the 1930s in the cases against Belgium and the Netherlands.

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In two of the cases, those against Spain and the United States, the Court found that it manifestly lacked jurisdiction, as neither of these two countries had consented to the jurisdiction of the Court. These cases were ordered to be removed from its List.

In the other eight cases, the Court refused the request for provisional measures, finding that it did not have *prima facie* jurisdiction, which is a prerequisite for the issue of provisional measures. These cases, however, continue to remain on the docket, as their issues are not prejudged by any findings on the request for provisional measures.

There was general agreement that the Court did not have *prima facie* jurisdiction over France, Germany, Italy and the United Kingdom. However, the same concurrence did not exist regarding the cases against Belgium, Canada, the Netherlands and Portugal.

In relation to these four states, Yugoslavia claimed jurisdiction on the basis of Article 36, para. 2. The court found it did not have *prima facie* jurisdiction because the incident took place prior to April 25, 1999, the date of Yugoslavia's declaration. Since the Yugoslav declaration only recognized the Courts jurisdiction for events after this date, the dispute was outside the Court's temporal limit. In her separate opinion Judge Higgins explains:

Certainly there were events, occurring after April 25th, that were the subject of the Federal Republic of Yugoslavia's complaint (though these were not specified by date or in any detail). But the Court has not been able to see a dispute arising only after April 25th.

This argument was strongly criticized in the dissenting opinions of Judges Shi, Vereshchetin and Vice-President Weeramantry.

The text of the judgments and opinions can be found at <<http://www.icj-cij.org>>.

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* Sonya Nigam is a legal writer and editor based in Ottawa.

II. BOOK REVIEW

Margaret P. Doxey, *United Nations Sanctions: Current Policy Issues; Revised Edition* (Halifax: Dalhousie University, 1999) pp. 57.

Dr. Doxey is Emeritus Professor and Senior Research Associate, Department of Political Studies, Trent University, Ontario. She is the author of *Economic Sanctions and International Enforcement* (2nd ed.; Macmillan for the Royal Institute of International Affairs, 1980); and *International Sanctions in Contemporary Perspective* (2nd ed.; Macmillan/St. Martins Press, 1996); and numerous articles in the international organization field. The following is an excerpt from the annotated bibliography by Chris Spencer entitled *Global Issues of the 21st Century – UN Challenges*

<<http://www.cyberus.ca/~spencer>>:

"A very useful booklet containing information up to April 99. Appendix offers basic facts about all sanctions imposed under UN Charter (Chapter VII). Text examines the four issues subject to debate:

- Domestic economic costs of sanctions to 'sending' states and prospects for burden-sharing. Options: financial help; tariff adjustments; technical/humanitarian assistance; specific help with sanctions enforcement.
- Mitigation on humanitarian grounds of sanctions-induced hardships in 'targets'. Ideally, punishment fits the crime, but scope for: improving ways to determine need; handling humanitarian exemptions; avoiding abuse through monitoring.
- Determining scope for direct targeting of leaders and elite groups. Types of targeted sanctions: personal travel restrictions; limit/end international bodies' membership (privileges); restrict air links; cultural/sports boycotts; financial sanctions (freezing assets) – most promising, but speed, information, selection, discipline are critical.
- Improved administration and enforcement. Much effort is underway to improve the work of Sanctions Committees; humanitarian issues will be handled better, but to detect/control serious violations of sanctions regimes remain strictly limited.

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III. BIOLOGICAL WEAPONS

Progress towards a Protocol on a verification and compliance mechanism continues but the end is not in sight. The Ad Hoc Group responsible for negotiating the document convened for its 18th session in January and February 2000, and it was apparent that deep rifts remain on issues such as the need to protect military and commercial secrets, inspection and monitoring procedures and the cost of verification. Commenting on these issues, Henrietta Wilson, writing in VERTIC's newsletter "Trust and Verify" says, "While all of these concerns are legitimate, they may be used by some states to slow down the talks in the hope of preventing the emergence of a strong Protocol or, indeed, any Protocol at all." (For a free e-mail copy of the VERTIC newsletter, see <<http://www.vertig.org>> and follow instructions.)

An excellent summary of the background and current status of the negotiations is to be seen in an article by Jenni Rissanen in *Disarmament Diplomacy*, (January/February 2000). It can be downloaded at: <<http://www.acronym.org.uk>>.

A series of Evaluation Papers covering each article of the Rolling Text by Malcolm Dando, Graham S. Pearson and Nicholas A. Sims is also available: <<http://www.brad.ac.uk/acad/sbtwc>>.

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IV. SANCTIONS AGAINST IRAQ

Doug Scott represented the Markland Group before the *House of Commons Standing Committee on Foreign Affairs* on March 23. Of the thirteen NGO presenters, he and Ron Cleminson were the only ones arguing in favour of maintaining the sanctions. (An expanded version of Doug Scott's presentation can be found on the Markland Group's website at <http://www.hcwn.org/link/mkg>. The Committee later tabled a report giving qualified approval for the idea of terminating the sanctions without delay and recommending that the government "urgently pursue" such a policy. Minister Axworthy has not yet indicated whether he intends to follow this recommendation.

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V. WHAT EVER HAPPENED TO "STAR WARS"?

By Samina Khan, Osgoode Hall Law School & Doug Scott, the Markland Group*

While it is widely perceived that the Strategic Defence Initiative (SDI) or "Star Wars", was abandoned because it was technically too difficult and too expensive, Harold Koh, Professor of International Law at Yale Law School, currently on leave serving as the Clinton Administration's Assistant Secretary of State for Human Rights, Democracy and Labor, has a different explanation – one that should be of interest to international lawyers.⁹ Koh argues that when the Reagan Administration proposed in 1985 to "reinterpret" the ABM Treaty in such a way as to permit the SDI project to proceed, various transnational actors and non-governmental organizations mobilized elite and popular constituencies to challenge the Administration's plan. The challenge took place within Senate hearings, debates over other arms control treaties, journal articles, and op-ed columns. As a result, Congress withheld appropriations from SDI tests that did not conform with the treaty; and the Senate adopted a position on the ABM Treaty Interpretation Resolution, which reaffirmed its original understanding of the treaty. In response, the Reagan and Bush Administrations maintained that their broad reinterpretation was "legally correct," but announced that they would comply with the original understanding as a matter of "policy." In 1993, the episode ended when President Clinton repudiated the unilateral Reagan reinterpretation and announced that his administration would abide by the original ABM Treaty interpretation.

Koh, in effect, argues that this episode supports his "transnational legal process" theory, which posits that nations obey international law best when it becomes "internalized" through a process of repeated interaction, norm enunciation and interpretation, involving states, governments, NGOs engaged in transnational public law litigation in domestic courts, international arbitration and legislative lobbying.

The US is now faced with the son of SDI. Possibly less ambitious in the technical sense, the proposed national missile defense program (NMD)

* Samina Khan is in her final year at Osgoode Hall Law School; Doug Scott is President of the Markland Group.

⁹ H. Koh, "Why Do Nations Obey International Law?" (1997) Y L.J. 2599.

runs into the same kind of trouble with the ABM treaty. Unlike 1985, however, the US administration is seeking Russian government consent rather than presuming to alter the ABM treaty unilaterally. As the ABM reinterpretation debate illustrates, pursuing national interests by working within coalitions of allies and through international treaties can be as least as effective as pursuing national interests through unilateral approaches that reject treaty use. The ABM reinterpretation debate is evidence of the inherent power of treaties, and can therefore be seen as a victory for treaty-making.

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VI. ARTICLE REVIEW

Tucker, Michael J., "After Detection – What? A Revisit", (in *Multilateral Approaches to Non-Proliferation*, Andrew Latham, Ed., York University Press, 1996).

Reviewed by Sean Howard, Ph.D.*

The issue of how to respond to violations of arms control accords is both complex and momentous. While there are many different types of treaty and transgression, the basic political question is compellingly simple: how to sensibly but effectively 'deal with cheats'? Fred Iklé's 1961 paper in *Foreign Affairs*, 'After Detection – What?', has long been considered a classic consideration of this theme. In 1996, Michael J. Tucker conducted a long overdue and thoroughly rewarding challenge inspection of Iklé's analysis.

Iklé is naturally preoccupied with the Cold War confrontation and the need, as he perceives it, for the West to be prepared to react to Soviet non-compliance by increasing military spending and deployment, avoiding a repetition of the calamitous failure to respond vigorously to Nazi Germany's illegal rearmament. To help both detect and deter cheating, Iklé stresses the value of structured cooperation between Western allies in the form of a multilateral agency to monitor compliance and report on its work to the United Nations.

Tucker assesses the extent to which the end of the Cold War increases the prospects for international cooperation in monitoring compliance while also producing new dilemmas in effectively responding to detected violations. While the basic response urged

* Sean Howard was founding editor of *Disarmament Diplomacy*. He is a freelance researcher in Nova Scotia.

by Iklé – reciprocal abrogation and punitive military counteraction – is obviously inappropriate to many contemporary challenges, particularly the threat of proliferation, a clear alternative strategy, adequately balancing carrot and stick, is yet to emerge.

Addressing the key issue of the role of the UN Security Council, Tucker observes that "only the most egregious breaches" of arms control agreements are likely to come to its attention. This may be so, but might it not be possible to establish a mechanism that would promote a more general awareness of non-compliance issues as part of the Council's ongoing operation? Iklé's paper suggested that the US Congress establish a 'Joint Committee on the Observance of Arms Controls'. Perhaps the time is ripe for such a body in the UN. As a tentative example, the College of Commissioners, designed to support UNMOVIC in Iraq, might be expanded to form a permanent Arms Control College to help maintain a political and practical focus on compliance issues. Tucker's analysis, while commendably thorough and incisive in its treatment of the new challenges of responding to detection, is more reticent than Iklé's in suggesting ways forward. <

Calendrier / Calendar

25-29 July 2000

The International Law Association (ILA) is holding its 69th Biennial Conference at the Barbican Centre, London, UK, hosted by its British Branch. In addition to the normal committee workshops, a series of parallel conferences on themes of wide general interest are planned. These are: international finance and sustainable development; world trade and economic law, and: international civil justice. For further information, contact <londonila@cs.com>. A Conference program and registration form can be found at: <<http://www.ila-hq.org/London2000.htm>>.

30 November - 1 December 2000

For its 3rd annual conference, the *Policy Research Initiative* invites paper proposals from researchers engaged in multidisciplinary analysis of any element of its Conference theme of "Canada in a Global Society". Proposals may address general questions, for example: what structures and frameworks are required to support human development in an interdependent world? See the web site at: <<http://policyresearch.schoolnet.ca/2000conference/call-e/htm>>. <

En Bref / In Brief

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Lockerbie Trial Briefing Site (LTBS)

The University of Glasgow School of Law has established a web site to track developments and provide analyses in the trial against the two Libyans accused of the December 1988 bombing of Pan Am flight 103 over Lockerbie. After years of delay, the trial began on May 3rd in a specially-constructed courtroom in the Netherlands, using Scottish law and judges. The "Scottish Courtroom" is considered Scottish territory.

Staffed by members of the law faculty, the LTBS covers the headlines, texts and analyses of the preliminary judgments, and provides other background information. While it exists under the cloud of accusations from major British media that it has connections to MI6, and hence is not as unbiased as it claims, the web site remains a significant source of information for anyone trying to stay informed about this case. The address is:

<<http://www.law.gla.ac.uk/lockerbie/>>

See also:

<http://news.bbc.co.uk/hi/english/in_depth/scotland/2000/lockerbie_trial/> (R.M.) <

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<p>Rédacteur/Editor: Robert McDougall</p> <p>Contributeurs/Contributors: Troy Fisher, Johanne Levasseur</p> <p>Traduction/Translation: Carmen Frédéric</p> <p>* detailed information about individual members of the <i>Bulletin</i> Team can be found on the CCIL website: * de plus amples renseignements sur les membres de l'Équipe du <i>Bulletin</i> se trouvent sur le site Internet à: <http://www.ccil-ccdi.ca></p> <p>The <i>Bulletin</i> is published tri-annually to share information about developments and activities in the field of international law in Canada and elsewhere. Ideas for articles, publication notices, events or other texts for inclusion in the <i>Bulletin</i> can be submitted to the CCIL office or directly by e-mail to bulletin@ccil-ccdi.ca.</p> <p>Publié trois fois par an, le <i>Bulletin</i> contient des renseignements relatifs aux développements du droit international et aux activités se rapportant à ce domaine au Canada et ailleurs. Vos idées pour des articles, des annonces de publication et événements, ou d'autres textes pour le <i>Bulletin</i> peuvent être envoyés au bureau du CCDI ou directement par courriel à l'adresse bulletin@ccil-ccdi.ca.</p>