Colloquium Examines International Law and Domestic Courts

A panel of U.S., Canadian, and international judges weighed the influence of international law on domestic courts during the North American Judicial Colloquium, held at Brandeis on November 6-8.

Called “What Can International and Domestic Judges Learn from One Another?” the colloquium hosted eight judges from the U.S., seven from Canada, and three from international courts. The domestic judges represented a combination of federal, U.S. state, and Canadian provincial courts. They came from as far as British Columbia, Manitoba, and Alabama. The international judges represented the Caribbean Court of Justice (Trinidad), the European Court of Human Rights (Strasbourg), and the International Criminal Court (The Hague).

As one judge noted, the event focused on “the way that the internationalization of the judiciary can affect us all in our work.” In six panel sessions, participants covered issues such as how international law was enshrined in the South African Constitution and how domestic courts have considered international environmental and human rights law.

They also discussed the impact of specific cases on international law, such as Medellin v. Texas, a U.S. Supreme Court death penalty case concerning the rights of foreign nationals to consult with consular officials. In addition, the colloquium outlined the process of selecting judges for both domestic and international courts and offered guidance on electronic legal research tools for international law.

In the sessions, judges noted the reluctance of some countries, in particular the United States, to cite foreign or international law in court decisions. One participant said that U.S. Supreme Court Justice Antonin Scalia criticized judges for “cherry picking” international law in order to support their decisions. Another participant said that some lawyers fear citing international law because they may be seen as not having relevant domestic law to support their cases. But that concern is diminishing in a globalized world, the judge added.

Indeed, participants also noted increasing support for applying international law in a...
The International Center for Ethics, Justice, and Public Life

The mission of the International Center for Ethics, Justice, and Public Life is to develop effective responses to conflict and injustice by offering innovative approaches to coexistence, strengthening the work of international courts, and encouraging ethical practice in civic and professional life.

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In the News

CI Funding Renewed
In June, the Alan B. Slifka Foundation renewed its funding to Coexistence International for an additional 18-month period. CI’s work during this period will focus on the expansion of its network of coexistence allies in West Africa, dissemination of its various resources, and policy outreach to international organizations and intergovernmental institutions.

Staff Highlights
In May 2008, Jessica Berns and Mari Fitzduff met with the assistant secretary general of the Organization of American States, Alberto Ramdin, to introduce the work of Coexistence International and explore possible points of collaboration. In June, Berns attended a conference on Media in Peacebuilding and Conflict Prevention in Bonn, Germany. In July, she was named program director of Coexistence International. Cynthia Cohen was a featured speaker in May during the celebration of the 30th anniversary of the women’s studies program at the University of New Hampshire, from which she earned a Ph.D. in education. In addition, she was appointed as the co-convenor of the Peace and Arts Commission of the International Peace Research Association.

In September, Leigh Swigart spoke about the book The International Judge, which she coauthored with Daniel Terris and Cesare Romano, to participants in the Sir Richard May Seminar on International Law and International Courts in The Hague. Marci McPhee gave a presentation titled “Who Benefits from International Service Learning?” at the conference Engaging Your Campus and the World through International Service Learning at Utah Valley University in October.

In October, John Lewis Moore and Ted Johnson participated in a panel on “Refugees and Minority Populations” in the “Conflict Studies: The New Generation of Ideas” conference sponsored by the Graduate Programs in Dispute Resolution of the McCormack Graduate School of Policy Studies at the University of Massachusetts, Boston.

Editor’s Note
Ethics Central has changed its publication schedule. The newsletter, which will continue to publish twice a year, will now be printed after the fall semester and after the spring semester in order to offer more timely coverage of the Center’s campus events. Please e-mail your comments about the newsletter to ethics@brandeis.edu.

Center Welcomes New Staff

John Lewis Moore is the program manager for Coexistence International. He is responsible for the implementation of CI’s programs, especially those in the West Africa sub-region which focus on facilitating a network of coexistence allies. He also contributes to the development of CI’s publications and workshop programs. Moore holds a M.A. in Dispute Resolution from the University of Massachusetts, Boston, and a B.A. in Economics from Boston College.

Shannon Taylor is the program coordinator for Coexistence International. She is responsible for maintaining administrative and financial systems, managing logistics for events, and contributing to CI’s array of publications. Taylor holds a BA in Biology from Reed College in Portland, OR, and is currently a candidate for a Master of Arts in Sustainable International Development at the Heller School of Social Policy and Management.

Master’s Students Begin Program
Twenty-six students have begun the Slifka Program’s Master of Arts in Coexistence and Conflict. The students will spend an academic year in residence at Brandeis (September–May), followed by a three-month field placement and completion of a master’s paper by December 2009. See www.brandeis.edu/slifka/masters/about/students.html to read the students’ bios and to learn more about the program.
Master’s Program Conference Examines Coexistence Field

Addressing the emergence of coexistence work as a profession, the Master’s Program in Coexistence and Conflict examined the challenges and future of the field in a conference from April 30 to May 2, 2008.

Guest speaker Ambassador Ragnar Ångeby, the Programme Director, Conflict Prevention in Practice, Folke Bernadotte Academy in Sweden, set up the first-ever governmental secretariat for conflict prevention. Ångeby talked about how his own understanding of the need for a conflict resolution profession had come from his extensive work as a diplomat, as a negotiator in the Commission on Security and Cooperation in Europe process, and as an analyst in the 1980s of East-West relations and strategic issues, including the nuclear and conventional military balance and disarmament.

The event also featured workshops with current and former master’s students, which included discussions of the issues that graduates face in the field, ways to enhance the program, and the tools to bring about more effective coexistence work.

Two panels with representatives from the UN, NGOs, and government also addressed these issues and others. In the first panel, Kaz Kuroda from the Fragile and Conflict-affected Countries Group of the World Bank said that the organization had focused on middle-income countries but was increasingly seeking to help low-income countries, including those that have faced recent upheaval. “What happens in a particular country has global implications that we cannot ignore,” he said.

Anita Ernstorfer, from the Governance and Public Administration Branch of the UN Department of Economic and Social Affairs, spoke about the skills needed to practice coexistence work, including knowledge of conflict resolution, development issues, and languages. She also emphasized the importance of cross-cultural understanding. “Many of these tasks are very difficult and highly politically sensitive,” she said.

Sharon Morris, the director of Mercy Corps, an international aid and development organization, noted the value of working with a broad range of institutions, including the military, with which she worked for a year. She advocated being more experimental in the field, describing, for example, how traditional clan elders were brought together to stem violence in Somalia. “We aren’t exploring all the possible ways we can to tackle natural resource violence,” she said.

From the U.S. State Department’s Office of Stabilization and Reconstruction, Claire Sneed said that government is beginning to understand the need to broaden its perspective on how to address world tensions, including knowledge of communities and culture. “We best achieve our national security interests by looking out for others’ interests,” she said.

The following day was dedicated to addressing issues of training and education — the kind of knowledge, skills, and values needed by conflict and coexistence professionals in order to be effective in their work. Joelle Jenny from the Department for International Development in the UK talked about the need for conflict prevention and conflict-sensitive development, the ability to effectively analyze and respond to conflict issues, and understanding organizations and their sensitivity to such issues, as well as how to partner with other organizations and with donors. Pamela Aal from the United States Institute of Peace talked about the work of the Institute in Training and Education, which will soon offer training modules online to enhance their effectiveness.

Participants agreed that such training was often more effectively developed in conjunction with other areas of expertise such as development or democracy work. They also agreed that, given the recently developed nature of the profession, practitioners should find effective ways of continuing their learning while out in the field. And they also emphasized that all those who graduated in coexistence work should market the field and their professional skills.
Focus on Coexistence and Human Rights

By Eileen Babbitt and Kristin Williams

The following is an excerpt from a publication series from Coexistence International titled Complementary Approaches to Coexistence Work:

Although human rights and coexistence work often share common objectives, there is a lack of purposeful coordination and cross-training in the skills of each field. In order to address inter-group tensions effectively, workers in both fields must look for new opportunities to learn from and engage with each other, through training workshops, informal conversations, skills-sharing, and coordination networks. More awareness of the language, methods, and basic frameworks of each field will affect their credibility or contradict their roles. In fact, their “greatest strength lies in the fact that they are separate, that they address the problems of violent conflict from different perspectives.” While the fields should not merge, pursuing certain synergies could enhance the effectiveness of both. It is imperative that both fields realize the importance of sequencing their respective efforts in the peacebuilding process, recognizing current limitations, and planning for the long-term. At the very least, they must remain attentive to each other’s work and must engage across fields to overcome the biases and hostilities that interfere with reaching their mutual goals. In many states sinking into or emerging from conflict, the resources and infrastructure are insufficient to allow stakeholders to gain control of deadly cycles of tension, instability, and violence. By utilizing a complementary approach, practitioners working in human rights and coexistence can approach inter-group tensions and violence from multiple perspectives, enabling groups to create the space from which sustainable peace can emerge. When peace is approached in a multi-faceted way, practitioners are more likely to succeed in ending or preventing violence.

The High Commissioner on National Minorities of the Organisation for Security and Co-operation in Europe, under the direction of the first High Commissioner Max van der Stoel, used human rights indicators to predict tensions between a state and a minority group within the state. Van der Stoel then utilized coexistence skills such as preventive diplomacy to quietly leverage governments and minority groups to change their behavior before escalation into gross human rights abuses or deadly conflict occurred. This office continues to combine the utility of human rights reporting with the cooperative/persuasive approach of coexistence in order to prevent inter-group tensions from deteriorating into violence, with many successful interventions to their credit…. The coexistence and human rights fields need not fully converge, particularly not in ways that
FROM THE DIRECTOR

FROM OCTOBER 8-10, more than 25 participants representing civil society, international organizations, and funding agencies from six West African countries gathered in Accra, Ghana, to take part in a three-day workshop on “Democracy, Conflict, and Coexistence in West Africa.” Sponsored by Coexistence International in partnership with the Ghana Center for Democratic Development and the West Africa Network for Peacebuilding, the workshop offered the opportunity to share field experiences, perspectives, and challenges facing democracy building in the region.

Participants discussed how in a post-conflict environment or divided societies, a society must transition from one in which differences are viewed as a problem and resolved violently, to one in which differences are respected and in which conflicts may be resolved peacefully through democratic norms. For example, in Cameroon, a multilingual society, government policy privileging one language to the exclusion of all others has eroded some citizens’ sense of democratic inclusion.

Following the workshop, CI and its local partner in Liberia, the Transitional Justice Working Group, presented a set of recommendations and guidelines for transitional justice processes to representatives of Liberian civil society, international organizations, government, and the Truth and Reconciliation Commission on October 14 in Monrovia, Liberia. The recommendations, which were informed by a CI-sponsored workshop held in Monrovia in February 2008, emphasized the importance of a participatory process that includes all segments of society, particularly marginalized groups; active civil society participation; and long-term donor commitment. CI also noted the importance of sustained application of these principles to the transitional justice process from the design phase to implementation.

For more information on the events in Ghana and Liberia, visit the Coexistence International website at www.coexistence.net.

FOSTERS PEACEBUILDING IN WEST AFRICA

Kalie Sillah, lead researcher of the West Africa Network for Peacebuilding, and Linda Darkwa, research fellow of the Legon Centre for International Affairs, University of Ghana, participate in the “Democracy, Conflict, and Coexistence in West Africa” workshop.

A COUNSELOR’S WISDOM

benefited not only from Ted Sorensen’s sterling way with words, but also from the wisdom accumulated over his career as a speechwriter, campaigner, counselor, public servant, international lawyer, and statesman. In 1999, Jehuda Reinharz asked Ted if he would be willing to serve as the founding chair of the advisory board for a new Brandeis venture, a center that would build bridges between academic and professional life.

Ted Sorensen accepted, and through his reputation and charm he has over the past ten years helped us assemble an extraordinary advisory board that has included world leaders in government, law, and diplomacy. His thoughtful and witty leadership of our board meetings, and his advice between those meetings, has helped us maintain a delicate balance between idealism and pragmatism.

After a decade of service, Ted has announced that he is stepping down as chair of the Center’s advisory board, after the tenth annual meeting in March 2009. I am pleased to announce that another founding board member of international distinction, Judge Richard Goldstone, has agreed to succeed Ted as chair.

Ted Sorensen’s favorite among President Kennedy’s speeches was the stirring address that he gave in June 1963 at American University: “Genuine peace,” Kennedy said, “must be the product of many nations, the sum of many acts. It must be dynamic, not static, changing to meet the challenge of each new generation. For peace is a process – a way of solving problems.”

Theodore C. Sorensen has been one of the pillars of our efforts to contribute to this process of peace. We are grateful.
JULY

Lee Perlman, formerly of The Abraham Fund (Jerusalem) and presently of United Jewish Communities, made a presentation to Ethics Center staff and students on the state of intercommunal coexistence in Israel. His talk focused on perceptions of coexistence within Israel and on various policy-level initiatives that seek to promote positive relationships between groups in the country.

SEPTEMBER

Fu Youde, professor of philosophy and Jewish studies of Shandong University in China, spoke about the defining characteristics of both Judaism and Confucianism in a series of talks cosponsored by the Ethics Center.

OCTOBER

A panel discussion on gender and art in South Asia featured musician Shubha Mudgal, part of the MusicUnitesUs residency.


Former Ethics Center Student Fellow Naomi Safran-Hon ’08 opened an exhibit at Brandeis called “Shared Future? Brandeis Alumni Visions of Coexistence in Palestine and Israel,” featuring portraits of past Slifka Scholars in their home environment, juxtaposed with text that describes each person’s ideas about the joint future of both Arabs and Jews in Israel.

NOVEMBER

In “What in the World Are We Doing? — Reflections from students who have studied, researched, or interned abroad,” four students who studied or worked in different countries with different goals examined common questions of identity, culture, learning, and ethics.

Peter Cole talked about his recent anthology, The Dream of the Poem, which presents poetry written by Arabic speaking Jews who adopted Arabic and Islamic linguistic and cultural practices.

Coexistence International presented a forum on Liberia, featuring Aaron Weah, national program assistant for the International Center for Transitional Justice, and Musue Haddad, a journalist in Liberia during the Charles Taylor regime and currently a student in the dual master’s degree program in Sustainable International Development and Coexistence and Conflict.

DECEMBER

Justin Becker ’09 performed a dance piece that explores the common trend he observed in Chinese society of gay men who marry women in order to give their parents the gift of a grandchild while maintaining their homosexual identity.

Conference Focuses on Gender Justice in Africa

From November 19-21, Leigh Swigart, director of Programs in International Justice and Society, participated in a conference in Accra, Ghana, titled “The Role of the Judiciary in Promoting Gender Justice in Africa.” The conference was organized by Partners in Gender Justice in Post-Conflict Societies, a group whose members include the International Legal Assistance Consortium, the United Nations Development Program, the United Nations Fund for Women, and the International Association of Women Judges. Brandeis University and the Ghanaian Judicial Service also collaborated in the planning of this conference.

In attendance were judges from 24 African countries, as well as representatives of civil-society and international organizations. Judges also attended from Sri Lanka, the U.K., and the U.S. While some African judges have been active in promoting gender justice in their countries for some time – for example, those from Cameroon, Benin, Ghana, Kenya, and Tanzania – others were exploring these issues for the first time. In a presentation, Justice Shiranee Tilakawardane of the Supreme Court of Sri Lanka, also a member of the Center’s advisory board, exhorted her fellow judges to ensure that gender justice becomes a reality in their countries.

The conference sessions focused on determining the various challenges that African women face in accessing justice, especially in cases of sexual violence, sexual harassment, and discrimination of various kinds. Panelists suggested models for confronting these challenges, including the use of alternative dispute resolution methods, specialized courts, intensive training on gender equity, and collaboration with civil-society organizations.

The Center also commissioned Brandeis alumna Mariama Khan ’08 (Sustainable International Development) of The Gambia to produce a film to premiere at the conference. Called Sutura: What Judges Need to Know about Rape and Justice in Senegal, the film features the voices of rape victims, lawyers, and psychologists, all speaking about crimes of sexual violence in Wolof, a widely-spoken Senegalese language.
The following is an excerpt from the keynote address of the North American Judicial Colloquium presented by Louise Arbour, former Supreme Court justice of Canada, former chief prosecutor of the International Criminal Tribunal for the former Yugoslavia, and former UN high commissioner for human rights:

I believe that 15 years after the creation of the first international effort since Nuremberg to use criminal law as an instrument of peace and security in the international environment, we have yet to develop a truly indigenous international criminal law system. As it comes to occupy more and more of the field, there is no doubt that the International Criminal Court will serve as a catalyst for the growth of a uniform, standardized model. But in my view we must stress the necessity for a truly indigenous system, one that is responsive to the unique particularities of conducting investigations and prosecutions on behalf of the international community, unanchored in any particular legal system, and unsupported by a state. Inevitably, we have at the outset borrowed heavily from national systems, and inevitably again, we have yielded to political pressures to create a hybrid forum, one reflective of some but not all of the features of the dominant world models. If this created a politically acceptable and a culturally comfortable result for the national jurists who would come to operate the emerging structure, I am not persuaded that we have refined that result to make it totally unique and self-standing. This is certainly true of the international judiciary. But it cannot credibly remain so forever.

Fifteen years ago, very few jurists had had a relevant practical international criminal law experience. Some had worked on transnational criminal law investigations, in the field of terrorism, money laundering and the like. A few, like my former Deputy Prosecutor Graham Blewitt, had actually investigated Nazi war criminals with a view to having them prosecuted nationally. But again there was no indigenous international criminal Bar and Bench. But now, 15 years later, international criminal law is taught in many law schools as part of a broad international law curriculum. Quality literature is being produced in surprising quantity. And there is an existing cadre of experienced investigators, analysts, lawyers, paralegals, interpreters, support staff of all kinds and of course judges who have grown with the work as it evolved.

When it comes to the judiciary, the model remains, however, relatively static. The method of appointment of judges and the required qualifications do not call for a unique expertise in the highly specialized field of international criminal litigation and adjudication. But eventually it should, as the field itself becomes better established. And I suggest that international and national judges would be well advised to take the initiative in developing the requirements for the constitution of a truly indigenous international criminal judiciary of the highest professional standards.

The text and a video recording of the complete speech are available at www.brandeis.edu/ethics/events/arbour.html.

Colloquium

continued from page 1

domestic context. One judge cited a conference that educated judges in the Caribbean region on issues of international laws and treaties. Another participant noted that international tribunals may draw on how judges act at the domestic level. Participants agreed that domestic and international courts are increasingly interdependent.

“As the rule of law expands throughout the world, dialogues like this will be more common,” said one participant.

The North American Judicial Colloquium followed two West African Judicial Colloquia, the first held in Dakar, Senegal, in January 2006, and the second held in Accra, Ghana, in October 2007. The aims of the Brandeis Judicial Colloquium are to foster an exchange of experience and expertise between judges in national judiciaries and those on international courts, and to establish an ongoing dialogue on fundamental issues that affect them both.

The North American Judicial Colloquium was funded by the JEHT Foundation and the David Berg Foundation.
NEW CENTER RESOURCES

The West African Judicial Colloquia
This report summarizes the proceedings from the West African Judicial Colloquia, which took place in Dakar, Senegal, in January 2006 and in Accra, Ghana, in October 2007, as well as the follow-up activities that have been suggested by participants. These events brought international judges together with their national counterparts for dialogue about the increasing interconnections that exist between international and national justice. To read the report online, go to www.brandeis.edu/ethics/pdfs/internationaljustice/WAfricaColloq.pdf.

Acting Together on the World Stage
The Slifka Program, in collaboration with Coexistence International and Theatre Without Borders, has completed a trailer for a documentary Acting Together on the World Stage: Performance and Peacebuilding in Global Perspective, featuring theatre artists whose work contributes to coexistence, social justice, and reconciliation. It can be viewed at movmedia.net/actingtogether.html.

Contrasts & Connection: Nine Students Reflect on Their Worldwide Internships/2008
Students in the Pax89 class – Internship in Peace, Conflict, and Coexistence Studies – write about their internship experiences around the world. To read the essays online, go to www.brandeis.edu/ethics/pdfs/ecsf/ecsf2008.pdf.

UPCOMING EVENT

“Fighting AIDS in Africa: Public Health vs. Human Rights”
Dr. Brian Williams, an epidemiologist at the World Health Organization in Geneva, will give his keynote address on Feb. 12, 2009, from 3:30-5 p.m. in the International Lounge, Usdan Student Center, at Brandeis. Williams will be in residence for the week as the third annual Distinguished Visiting Practitioner of the Center. Once exiled from his native South Africa, he has worked in Kenya, Tanzania, and South Africa, notably with communities troubled by multiple health risks. In this address, he attempts to reconcile the disparate views of public-health experts and human-rights advocates to explore how policymakers, donors, scientists, and service providers can work together more effectively. To learn more about the week’s events, visit www.brandeis.edu/ethics/events.

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