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THE SOUTH AMERICAN JUDICIAL COLLOQUIUM

*The Value of International Law
for National Legal Systems*

CONVENORS

- Ricardo LiRosi, Judge of the Court of Appeal in Buenos Aires and Vice-President of the International Judicial Academy
- René Blattmann, Judge of the International Criminal Court
- Leigh Swigart, Director of Programs in International Justice and Society, Brandeis University
- James Apple, President of the International Judicial Academy



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with the generous support of the MacArthur Foundation.*

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The complete report is available in Spanish [PDF]:

http://www.brandeis.edu/ethics/pdfs/internationaljustice/SAJC_Report_2010_Espanol.pdf

To learn more about the institutions that organized the South American Judicial Colloquium, see the following links:

Programs in International Justice and Society

The Center for Ethics, Justice, and Public Life at Brandeis University

<http://www.brandeis.edu/ethics/internationaljustice/index.html>

The International Judicial Academy

<http://www.ijaworld.org/>

South American Judicial Colloquium

The South American Judicial Colloquium was held from November 4-7, 2009 in Buenos Aires, Argentina. Titled “The Value of International Law for National Legal Systems,” this was the fourth in an ongoing series of judicial colloquia organized by the International Center for Ethics, Justice, and Public Life at Brandeis University. The aim of the Brandeis judicial colloquia program is to bring together domestic judges and their counterparts from the international sphere to discuss the increasing interconnections that exist between domestic and international law.

The International Judicial Academy, headquartered in Washington, D.C., with a regional office in Argentina, was the partner institution for the colloquium. Additional sponsorship came from La Federación Latinoamericana de Magistrados, La Asociación de Mujeres Jueces de Argentina, La Asociación de Magistrados y Funcionarios, and La Junta Federal de Cortes. Funding was provided through a generous grant from the MacArthur Foundation.

Twenty judges attended from eight South American countries: Argentina, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, and Uruguay.

The opening ceremony for the South American Judicial Colloquium was held on the historic premises of the Stock Exchange (*Bolsa de Comercio*) of Buenos Aires, presided over by Dr. Ricardo Liroso, Judge of the Court of Appeals of Buenos Aires and Vice President of the International Judicial Academy. The other principal organizer of the colloquium, Dr. Leigh Swigart of Brandeis University, welcomed participants and described how pleased her institution was to hold its first judicial colloquium in South America.

These remarks were followed by the keynote address, delivered by Judge Elena Highton, Vice President of the Supreme Court of Argentina, who focused on how Argentina’s courts have dealt with international law and treaties in recent years. Judge Highton opened her presentation by referring to the relationship between national and international law and how its origins were based in the notions of territorial

sovereignty and non-interference in the internal affairs of other states. However, she continued, this conceptualization began to change after World War II, when the world recognized the need to safeguard peace and not only the autonomy of states. It was understood, then, that the international community was composed of states, international organizations, NGOs, peoples, individuals and transnational corporations.

Judge Highton noted that the United Nations Charter served to establish a general public order. Furthermore, *jus cogens* with an *erga omnes* effect is imperative for all states, even if they are not parties to international law, which differentiates supranational law from both domestic and international law. Judge Highton closed by elaborating on the fundamental human rights that were incorporated into the Argentinean Constitution with the 1994 reform, particularly those related to the forced disappearance of persons and torture.

The following day, the colloquium program commenced with a presentation by Dr. James Apple, President of the International Judicial Academy, on the theme “Using International Law and its

Role in National Legal Systems.” Dr. Apple first gave an overview of international law around the world, and then focused on his own country, the United States. Dr. Apple explained that in the U.S., international law is often questioned, and there is even a movement to deny its very existence. However, Dr. Apple clarified the importance that international law has had throughout the history of his country. He then described the development of international law and noted that since WWII, more than forty international tribunals had been created. For Dr. Apple, international space law illustrates the importance of updating international law to keep pace with the times.

In closing, Dr. Apple asserted that the responsibility of administering national and international justice is in the hands of national courts and administrations. The only way to ensure that international law is recognized globally is through its use. For national judges to use international law, they first need to know it. He suggested that this is why colloquia such as the South American Judicial Colloquium are crucial for the ongoing legal education of judges.

Dr. Leigh Swigart spoke next about her research and publications on international judges and the institutions within which they serve, providing context for later discussion of the international courts that have an impact on the countries represented at the colloquium. Dr. Swigart agreed with her compatriot Dr. Apple that there is a widespread mistrust of international law and institutions in the US. South American countries are much more open: all countries in the region are signatories of the Rome Statute of the International Criminal Court, and most are parties to the Inter-American Court of Human Rights.

Dr. Swigart identified four main types of international courts: Inter-state dispute resolution courts, courts of regional and economic integration, human rights courts, and, perhaps most well known through the media, international criminal courts and tribunals.

She then described the various difficulties and complexities of international judicial institutions, including the funding issues they confront and the way in which they deal with diverse benches and constituencies. Dr. Swigart noted that many international courts are still

emerging institutions, and thus fragile and vulnerable. They need to prove their necessity and utility to many critics in order to receive strong support from member states.

To end her presentation, Dr. Swigart emphasized the evolution that the U.S. has been undergoing under the Obama administration regarding international law. This change is illustrated by the recent signing of the UN Convention on the Rights of Persons with Disabilities, positive movement toward signing the Convention on the Elimination of All Forms of Discrimination against Women, and a gradual softening of views toward the International Criminal Court.

South American judges had the opportunity to learn directly of the everyday experiences of an international judge in the afternoon, when René Blattmann of the International Criminal Court spoke of the challenges and successes of the early years of his institution as well as its ongoing historic first trial.

Judge Blattmann opened his presentation by stressing that the creation of the International Criminal Court emerged

from historical necessity. From World War II until today, between 70 and 100 million people have been victims of war crimes, crimes against humanity, and genocide, thus an institutional response was imperative. Judge Blattmann pointed out that even though domestic tribunals have the first responsibility to deal with these situations, history has shown that wars and conflicts can lead to the failure of domestic justice systems, leaving the international community to step in. This is one of the reasons that there have been a number of different *ad hoc* war crimes tribunals, the best-known being the International Criminal Tribunals for the former Yugoslavia and Rwanda.

Judge Blattmann made a deep and comprehensive presentation about the International Criminal Court's operation and its process of formation through the Rome Statute. The Rome Statute had no precedent in terms of international consensus – 110 countries had ratified the treaty as of November 2009. Judge Blattmann also noted that an important element of the Rome Treaty is its incorporation into domestic law, which serves to strengthen the legal regimes of member states.

The first day ended with a provocative presentation by Dr. Alberto Garay on the theme “Problems Related to the Effects of the Decisions of the Inter-American Court of Human Rights.” Dr. Garay began his session by describing some common trends in Latin American countries, including a lack of respect for the rule of law and for fundamental rights. Dr. Garay explained that it is important to disseminate the content of human rights treaties, so that judges may take them into consideration when making their legal decisions.

Dr. Garay also offered some comparisons between basic common and civil law, and the Latin and Anglo-Saxon systems. Standards for how to interpret a law or a decision may vary considerably from system to system. Dr. Garay noted that there are not enough guidelines on this matter from the Inter-American Human Rights Commission, illustrating this point with several specific examples. Dr. Garay concluded his session by referring to the need to interpret the Inter-American Human Rights Convention in a restrictive way to avoid interpretations so wide that they may ultimately discredit the Convention.

The second day continued with a diverse selection of themes related to the application of international law in domestic contexts. Dr. Maria Elsa Uzal spoke on the timely topic of “Insolvency in International Law.” Dr. Uzal noted the need for cooperation among countries in order to achieve a real integration in the area of international private law. Multinational cases are particularly difficult, as more than one state needs to contribute to the solution. Dr. Uzal asserted that inter-state cooperation is fundamental since it does not make sense to treat these as isolated cases in each country. Furthermore, it is essential to move from a territorial conception based on decisions made by one state, to a cooperation principle. Dr. Uzal explained that there are already relevant international organizations facilitating this kind of effort. A good example, and one highly relevant for the Latin American region, is MERCOSUR (Mercado Común del Sur). Through this organization principles could be agreed upon to create general criteria that would facilitate the integration of international private law. Colloquium participants who work in courts dealing with family issues were

particularly interested in the session on “International Cooperation in the Recovery of Children,” led by Dr. María Suzan Najurieta. Dr. Najurieta referred to the situation of children in Latin America as a highly sensitive issue and noted the need for international cooperation among relevant authorities in finding solutions to these kinds of cases. She affirmed that the starting point in dealing with these issues is the United Nations Convention on the Rights of the Child. She pointed out that all conventions related to children focus on how to improve their lives in terms of their physical and emotional environments. Dr. Najurieta ended her presentation by reminding the participants that children around the world need to have their rights protected and judges must keep this in mind when making decisions. Cooperation between judges in different countries is fundamental to effectively promoting and carrying out this goal.

The role of forensic anthropology in the investigation and prosecution of human rights violations and crimes against humanity was powerfully described that afternoon by Dr. Mercedes Salado Puerto. A member of the renowned organization

El Equipo Argentino de Antropología Forense (EAAF), Dr. Salado spoke of EAAF's strategy of working with judicial systems and police forces, as well as with the families of victims, when recovering and identifying the bodies of individuals who are suspected of having been "disappeared" or killed by state forces.

Dr. Salado was introduced by Dr. Pablo Basel, who referred to the devastating consequences that Argentina's military dictatorship had for its history. With the return of democracy in 1983, an important goal of the new government was to give back the identity of people who had disappeared. The EAAF played a fundamental role in this process, by combining anthropology and archaeology. Dr. Salado noted that the EAAF works all over Latin America, providing technical advice to any authority that requires it. He explained the main distinctions between massive disasters and human rights violations. When massive disasters occur, the identification of corpses starts right away and usually with collaboration from all sectors of society, including the government. In the case of human rights violations, the State does not collaborate, since it is often the perpetrator. At the

same time, the families of the victims tend to stay away, and furthermore, the investigation starts after many years. Thus, the identification process is much more complicated.

Dr. Salado specified that the EAAF was created as a forensic alternative, independent from official forensic institutions, primarily to investigate human rights violations. Dr. Salado reviewed the stages of an investigation of this type, emphasizing that the main goal is identification of victims and their causes of death, carried out with due respect to the culture and religion of families. The EAAF's mission has an important humanitarian component, placing a special emphasis on the rights of families to recover the bodies of victims and to give them a funeral and proper mourning.

The day ended with an eloquent presentation by Dr. Rolando Gialdino on "International Treaties and Human Rights," using many Argentine cases to illustrate his remarks. Dr. Gialdino stressed that international human rights law revolutionized the legal world after the second half of the 20th century. Until then, international law had been limited to

states and international organizations, but after that the human being started being a main subject of international law.

Dr. Gialdino noted the important changes that international human rights law has generated within domestic law, chiefly incorporating principles, values, freedoms, and guarantees. Dr. Gialdino also referred during his talk to another important consequence of this kind of law, the fact that states are accountable to the international community and not only to their citizens. Gialdino also offered his reflections on important principles including equality and non-discrimination, and their direct connection with social justice, concluding that fundamental rights must be understood as an instrument for liberty and equality.

On the morning of the third day, Dr. Gustavo Bossert, a local legal scholar of great international renown, delivered the final formal presentation of the colloquium. He spoke to participants about non-discrimination toward homosexuals and transsexuals, a notion that is less familiar on the South American continent than in the United States and Europe. Dr. Bossert began his presentation by referring to the issue of

discrimination in general. After World War II, the world understood unanimously for the first time, the need to address this issue, resulting in the establishment of the Universal Declaration of Human Rights.

About thirty years ago, western nations began working against sexual discrimination, advocating specifically for the right for homosexuals to have a normal family life. The International Covenant on Civil and Political Rights prohibits state discrimination based on race, skin color, gender, etc. Dr. Bossert referred to the evolution of that notion around the world, explained some of its legal underpinnings, and noted the extension of non-discrimination to homosexuals and transsexuals. Dr. Bossert concluded his presentation by declaring that the world is currently on the right path regarding this issue.

At the end of the colloquium, judges from the eight countries represented had the opportunity to share their views on the “state of human rights” in their respective countries. The number of challenges outlined by participants – be they threats to judicial independence, budgetary problems, or difficulties in applying the international conventions and treaties that

their governments have signed and ratified – underscored the importance of having individuals of integrity and courage in South American judiciaries.

The organizers of the South American Judicial Colloquium came away from the event feeling confidence in the ability of participants to establish the rule of law in their countries and to collaborate with their colleagues, both nationally and internationally, to implement international and human rights law in the South American region.

Judicial Symposium Participants

ARGENTINA

PATRICIA E. CASTRO, Juez de la Cámara Nacional de Apelaciones en lo Civil, Sala I.

GRACIELA ADRIANA VARELA, Juez Nacional de Primera Instancia en lo Civil con competencia exclusiva en cuestiones de Familia a cargo del Juzgado n° 87.

MARIA ISABEL BENAVENTE, Juez Nacional de primera instancia en lo Civil.

EMILIO VAZQUEZ VIERA, abogado, Decano de la Facultad de Ciencias Jurídicas de la Universidad de Mendoza.

BOLIVIA

BEATRIZ ALCIRA SANDOVAL BASCOPE, Ministra en ejercicio de la Corte Suprema de Justicia de Bolivia.

LUIS ENRIQUE VARGAS LEMAITRE, Secretario General de la Presidencia de la Corte Suprema de Justicia de Bolivia.

CHILE

MAURICIO OLAVE ASTORGA, Juez de Juicio Oral en lo Penal en el 4° Tribunal Oral de Santiago.

MARIELA JORQUERA TORRES, Juez Oral en lo Penal de Santiago.

LUIS FRANCISCO AVILES MELLADO, Juez de Garantía en la ciudad de Santiago.

COLOMBIA

PATRICIA JACQUELIN FERIA BELLO, Fiscal en comisión ante la vicefiscalía General de la Nación.

PATRICIA HERNANDEZ ZAMBRANO, Fiscal de la Unidad de Justicia y Paz de la Fiscalía General de la Nación con sede en Medellín (A).

ECUADOR

PABLO EFRAIN VINTIMILLA GONZALEZ, Presidente titular de la Corte Provincial de Justicia del Azuay.

PAULINA AGUIRRE SUAREZ, Ministra Primera Sala Laboral Niñez y Adolescencia; Corte Superior de Quito.

PARAGUAY

MARIA SOL ZUCCOLILLO DE VOUGA, Miembro del Tribunal de Apelación en lo Civil y Comercial, cargo que actualmente ocupa.-

MARIA DEL CARMEN ZUCCOLILLO DE MONTERO, Agente Fiscal en lo Laboral.

VALENTINA NUÑEZ GONZALEZ, Miembro del Tribunal de Apelación en lo Civil y Comercial Primera Sala de la Capital.

PERU

JOSEFA IZAGA PELLEGRIN, Juez Superior en la Corte Superior de Justicia de Lima.

ELVIRA MARIA ALVAREZ ALAZABAL, Jueza Superior de la Corte de Justicia de Lima.-

URUGUAY

MARIA CRISTINA CRESPO HARO, Magistrada fuero Civil de Montevideo.

ESTELA MARI JUBETTE PESCE, Juez Letrada de Primera Instancia en lo Civil de 18° turno en Montevideo, Uruguay.

Speakers

JAMES APPLE, Presidente de la Academia Judicial Internacional.

RENE BLATTMANN, Juez de la Corte Penal Internacional.

GUSTAVO ALBERTO BOSSERT, antiguo Ministro de la Corte Suprema de Justicia de la Nación Argentina; Profesor Titular Consulto, Facultad de Derecho de la Universidad Nacional de Buenos Aires. Profesor Invitado de la Université Panthéon-Assas Paris II, desde 1993 hasta 2004.

ALBERTO FERNANDO GARAY, Abogado, Profesor de la Escuela de Derecho Universidad Torcuato Di Tella.

ROLANDO GIALDINO, Secretario Letrado de la Corte Suprema de la Nación Argentina.

ELENA INES HIGHTON, Ministro de la Corte Suprema de Justicia de la Nación Argentina.

MARÍA SUSANA NAJURIETA, Juez de la Cámara Nacional de Apelaciones en lo Civil y Comercial Federal de Buenos Aires.

MERCEDES SALADO PUERTO, Antropóloga e Integrante del Equipo Argentino de Antropología Forense.

LEIGH SWIGART, Directora de Programas de Justicia Internacional y Sociedad en el Centro Internacional de Ética, Justicia y Vida Pública de la Universidad de Brandeis.

MARIA ELSA UZAL, Juez de la Cámara Nacional de Apelaciones en lo Comercial de la República Argentina.