Committee Newsletter | Spring 2016

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Dear Colleagues,

Catch Us In Missouri: First 15 Attendees Get a Free Section on International Law Swag!

Two heads are better than one, they say. We at the Committee have come to appreciate this saying and the power of collaboration and how this makes for successful events and partnerships. Thus, we hope you will join us from May 5-7th at the following events that we are co-sponsoring all at the Four Seasons Hotel, unless otherwise noted:

I. **Friday May 6, 2016: 9:00 AM – 10:00 AM-Ballroom B Four Seasons Hotel**
*Expanding the United States Intellectual Property Across the Globe - The Impacts of the Trans-Pacific Partnership Agreement on IP.*

II. **Friday May 6, 2016: 3:00 PM-5:00 PM-Missouri Court of Appeals, Eastern District, 815 Olive Street, Room 304**
*International Oratory Competition & Reception: Global Speed Networking Meet and Greet: The Far Reach of the Legal Profession.*

III. **Saturday May 7, 2016: 11:00AM-12:00PM- Ballroom A Four Seasons Hotel**

Never Take For Granted The Power of the Pen!

Please write in our Newsletter!

Our quarterly Committee Newsletter is a fantastic opportunity for young lawyers to get published, collaborate with others in the legal profession and out, in the YLD and out on social policy and emerging issues in our world. I hope that you will continue to take advantage of this opportunity. Our modest 200-300 word count is to encourage your insight into a subject in which you are an expert or are honing your expert level.

There is so much to write about!

In the past quarter, a lot has transpired internationally, and here just a few of them: 1) the death of Prince formerly known as the Artist or vice versa, whose extraordinary talent, creativity, innovation, and imagination touched the hearts and moved the feet of millions of music lovers in America and around the world. Although his prolific body of work was the focus of his fame,
Prince was a citizen of the world and humanitarian; 2) violent extremism in Belgium; and 3) of course the #bringbackourgirls campaign, where two years later over 200 teenage girls remain missing after being snatched out of their boarding school rooms in the thick of the night by Boko Haram, a violent extremist group, which has pled allegiance to ISIS and is deemed a terrorist group by the U.S. State Department. We hope to see more of our Committee, YLD and larger ABA members write about the issues of the day. Believe it or not, through my flurry of writing vis a vis the YLD, etc, I have been approached for partnership opportunities and by potential employers for exciting job opportunities in my practice area. This underscores that you never know who is reading/watching and thus you cannot take for granted the opportunities that abound just through the power of the pen.

As you will see from the below contributions there is the need for continued discourse on: 1) international human rights laws and criminal justice, war crimes and crimes against humanity; 2) the Paris Agreement and environmental impacts as it relates to actions taken by China; 3) impact of the Trans Pacific Partnership Agreement (AKA TPP) on Africa; and 4) young lawyers passion for and interest in international law.

My Service to the YLD Concluding: This Is My Second to the Last Newsletter Before I Pass on the Baton-I Still Have Heart for YLD

Let me begin by expressing my sincere gratitude to the fantastic ABA, YLD staff, leaders and my colleagues who I have had the opportunity to work with over the past four years: Presidents Brown, Hubbard, Bellows, Robin, Donna, Lisa, Angela, my whole ABA Section on International Law, Unaccompanied Minor, Anti-Trafficking Taskforce, Rule of Law Initiative, TIPS, Section on Environmental Law crew (close to 50 and so too long a list, but very important folks), Renee, Tara, Tracey, Tracy, Alia, Brandon, Kyle, Tania, Lisa, Ally, Thomas, Karthik, Reid, Mario, Andrew, Christina, Myra, Cat, Lacy, Dana, Stefan, Anna, Shenique, Collin, Will, Morgan, Anthony, Dave, Tommy, Logan, Miriah, Aastha, Dionna, Samhra, Mason, Regine, Chris and all who have supported in close proximity or at arms length. I express my sincere apologies for others I may have left out. Because of your individual and collective contribution of your time and talent, our Committee has succeeded. It goes without saying that our ABA and YLD village helped to propel the YLD International Law Committee to success, beyond our wildest imaginations. I am optimistic that my successor (s) will build upon our fantastic legacy in this very exciting practice of international law, by harnessing the relationships we currently have and seeking more to even more bigger and bolder things.

As the Bar year comes to an end sometime in August, I reflect on the fantastic three years that the YLD has afforded me by granting me the opportunity to lead this Committee, seeing my passion for the robust practice of international law. I have had the opportunity to meet so many great people from all over the world and all walks of life and gained great insights from their unique perspectives and how these perspectives shape their train of thought and regional attitudes towards life. In the global community, who we are is punctuated by our environment, experiences and biological make up or as my parents will say “constitutional make up.” I am proud to say that the ABA and YLD have been a resounding positive exclamation mark (!) in my life and there is no period (.) in this story as I intend to continue to serve the ABA and YLD.

So stay tuned….
Hate Speech and Persecution: “silent enim leges inter arma” in the Seselj Case at the International Criminal Tribunal for the Former Yugoslavia (ICTY)

By Abigail Bridgman

Abigail Bridgman is licensed to practice in California and is currently working as a legal consultant on the Defense Team for Dominic Ongwen at the International Criminal Court. She has also worked in the Registry at the International Criminal Tribunal for Rwanda (ICTR). Her passion is in human rights and criminal justice.

“Vojislav Seselj’s acquittal is a victory for advocates of ethnic cleansing.” In her dissent, Judge Lattanzi said the Majority’s opinion reminds her of the Romans who justified their bloody conquests by the principle: “silent enim leges inter arma.” (In time of war the laws fall silent.)

Seselj’s denigrating statements are documented: comparing the Croats to primates and vampires and calling the Bosnian Muslims excrement. The Majority has decided that this is not sufficient incitement for criminal responsibility and that propaganda of nationalist ideology, notwithstanding its divisive content is not criminal. Comments such as suggesting wiping out certain classes of people, calling to make sure that some people should not leave an area alive, or stating there is no place for certain classes of people (especially those that have been singled out and dehumanized), are reasonable, as long as they are made within the context of a conflict. They can be interpreted as simply “boost[ing] the morale of the troops of his camp, rather than call[ing] upon them to spare no one” the Court opined.

The Seselj decision is a step back in international criminal law jurisprudence.

For example, the International Criminal Tribunal for Rwanda (ICTR) emphasized that context was an important consideration. The Trial Chamber in the Ruggiu case\(^2\) found that persecution can occur even when one does not explicitly call for violence. The radio broadcasts in that case which singled out and attacked the Tutsi and Belgians on discriminatory grounds, were in effect depriving them of their liberty and humanity enjoyed by the rest of society. The Chamber held that this deprivation could be said to have its aim in the death and removal of those persons from the society in which they had lived, or eventually from humanity itself. Additionally, in the Media Case\(^3\), the Appeals Chamber stated that liability could arise if hate speech is accompanied by separate calls for violence or actual violence.

It remains to be seen if the ICTY prosecutor will appeal this decision.

\(^{2}\)Prosecutor v. Ruggiu, Case No. ICTR 97-32-I, (Trial Chamber), (June 1, 2000), para. 22
China’s Market-Based Approach to Climate Change

By: Nick Kowalski

Nick Kowalski practices international law, real estate, and energy law and is the founder of the International Law Committee at the Cincinnati Bar Association.

On April 22, 2016, China renewed its commitment to combating climate change by signing the Paris Agreement. For its part, it plans to implement a national Emissions Trading System (ETS) beginning in 2017. The ETS is one aspect of China’s 13th Five Year Plan (2016 – 2020) and an important part of a long-term goal to lower its carbon intensity by 60% to 65% of the 2005 level by 2030. Initially, the ETS will only regulate carbon dioxide and certain industries, including iron and steel, power generation, chemicals, building materials, papermaking, and nonferrous metals.

Considering China consumes over half of the coal in the world and produces twice as much carbon as the United States, its system will immediately become the largest cap and trade program in the world when it comes online.

This is not China’s first venture into emissions trading. Starting in 2013, seven pilot carbon trading programs were established across the country (Beijing, Shanghai, Tianjin, Chongqing, Guangdong Province, Shenzhen, and Hubei Province). The pilot programs were given considerable leeway to develop their own schemes, which resulted in a variety of approaches.

Thus, the national ETS will take lessons from these pilot programs and others like those in the European Union and California. Officials hope that the ETS will help the economy shift from a “growth at all cost” model to one that is greener and more sustainable. Some are even optimistic that China’s carbon emissions will peak before 2030, and that could go a long way towards achieving the goal set by the Paris Agreement.
The Potential Impact of the Transpacific Partnership (TPP) Agreement on Africa, Especially in Light of the Africa Growth and Opportunity Act (AGOA)

By: Abiola Afolayan

Abiola Afolayan is the current chair of the YLD International Law Committee and is also foreign affairs advisor and counsel for a senior Member of Congress, managing a robust portfolio related to: international trade and global economic prosperity, energy security, environmental pacts, the protection of youth, respect for the rule of law, democracy promotion, counter-terrorism, comprehensive sustainable regional peace.

There needs to be an integration of Africa/ the Africa Growth and Opportunity Act (AGOA) into the TPP so that Africa is not left behind as the last frontier when it comes to the global economic prosperity that abound in ongoing and developing international trade regimes.

The Trans Pacific Partnership Agreement (TPP), the regional trade deal signed by the U.S and 11 pacific rim countries mostly in the pacific rim/Asia covers over 40 percent of the world’s global economy and over 30 percent of world global trade, ranging from transportation infrastructure to agriculture to intellectual property and even the pharmaceutical industry.

According to the United States Trade Representative: American exports are a critical source of economic growth, prosperity, and jobs in every state in the United States. Indeed, central to the Administration’s commitment to doing trade right is applying all of the resources available to the U.S. Trade Representative (USTR) toward opening important markets to American exports, and leveling the playing field of the global economy so that Americans can benefit.

This approach can be applied in Africa as well.

Indeed, many analysts have asked why Africa, consisting of nations that are some of the greatest trading partners of some of the TPP countries is not part of the deal or at least discussed robustly in the deal. While the TPP is clearly geared towards the rim countries, much like the Transatlantic Trade and Investment Partnership (TTIP), another regional trade pact is between the U.S. and the European Union, the fact of the matter is that both T trade pacts with the Asia rim countries and Europe are a lot more robust covering way beyond agriculture which is the primary focus of AGOA.

Kudos to South Africa as a prime example of an African nation which is postured to avail itself of the opportunities that abound within the TPP in the context of AGOA.

Specifically, according to the U.S. Trade Representative, under the TPP there will be Poultry, Pork, and Beef Exports to South Africa. In the context of an African Growth and Opportunity Act (AGOA) out of cycle eligibility review, in early 2016, South Africa lifted restrictions on the import of U.S. poultry, pork, and beef products, ending South Africa’s longstanding barriers on imports of these U.S. agricultural products. With the removal of South Africa’s barriers to exports of U.S. poultry, pork, and beef, U.S. exports of these products to South Africa could reach up to

The good news is that one of the 30 provisions of the TPP allows for new parties to join in the deal once the agreement is ratified by a majority of the rim countries. Another good news is that this gives African countries the opportunity to initiate becoming part of the TPP in light of their trade relations with the TPP nations. Negotiation talks are still ongoing for the TTIP, but if completed successfully, ratified and implement, according to analysts the TTIP will boost the economy of the U.S., Europe and the rest of the world by €300 billion, while creating millions of jobs.

Again, I would argue that African countries initiate efforts to become shareholders in this trade deal as well.
On April 12, 2016, the YLD International Law Committee and the ABA Section of International Law co-sponsored a Pathways to Employment in International Law panel in New York City. The event, one of the Section’s signature programs has been in place for over 15 years and the goal is to provide advice, guidance and inspiration to law students and young lawyers about pursuing a career in international law. This is the first time that the YLD-International Law Committee collaborated with the Section to co-sponsor the program.

The event was a resounding success, with over 25 young lawyers, J.D. and LLM students in attendance. The panelists included Michael Daly, Lecturer at George Washington Law School and Clerk to Charles Brower (International Arbitrator), Joseph Khawam from the State Department, Mason Hubbard from DLA Piper, and Fatema Merchant, an expert in trade compliance and sanctions from Sheppard Mullin. I moderated the panel. The panel fielded a series of questions from me for about 50 minutes, followed by another 30 minutes of questions from the audience. The panelists spoke candidly of their own journeys to an international law career, shared networking tips with the audience members, and also discussed how to overcome common obstacles faced by young lawyers in trying to break into the highly competitive world of international law practice. One common theme that emerged from the panel was that a young attorney must persevere, and build on their own unique skill sets, and distinguish themselves when trying to build an international law career. In this regard, the panelists all emphasized that the ABA offers knowledge development, unique networking and career advancement opportunities for young lawyers. Mason Hubbard further added that the YLD offers a strong platform for young lawyers to develop their skills and network among peers.

In sum, the Panel was a lively event that was enriching both for all. As Joseph Khawam, who currently advises on international sanctions issues at the State Department remarked, he enjoyed listening to “the panel of experienced and diverse international lawyers describe their paths to careers in international law, while sharing my own.” Indeed, the extent and breadth of questions from the audience indicated a strong and genuine interest among young lawyers in the field of international law practice. The YLD International Law Committee looks forward to co-sponsoring more such events with the Section in the coming years and is thankful for the opportunity to collaborate with the Section on such exciting programming!
About the Editor: Reid Whitten

By: Thomas Gottschlich, Karthik Nagarajan and Abiola Afolayan
YLD International Law Committee Team

Three quarters ago, Reid took on the reins of the Committee Newsletter, understanding the importance of motivating Committee members to write, being a prolific and successful blogger and writer. In addition to serving as a Partner at his law firm in Brussels and managing an very impressive international law portfolio with his work at Sheppard Mullin in Washington D.C. and Brussels. He is also a Visiting Professor at the Université Catholique de Lille in France teaching international law. The Committee continues to appreciate Reid's work on the Newsletter.

Questions about joining our committee or writing in our Newsletter can be directed to: abiolaafolayan@gmail.com or reid.whitten@gmail.com.