INTERNATIONAL LAW NEWS

www.americanbar.org/intlaw

SPRING 2018 VOL. 46 NO. 3

SECTION OF INTERNATIONAL LAW AMERICAN BAR ASSOCIATION

Advising Clients with Globally Mobile Workforces: Going Beyond Immigration Law

By Donald C. Dowling, Jr.

Globalization is driving workforce trends and reshaping the expectations for multinational companies to mobilize and manage globally mobile talent, cross-border commuters, and foreign-based employees. But moving, managing, and classifying those employees across borders requires a proactive, strategic, and legally compliant approach across the relevant countries. In structuring overseas postings, multinationals need to consider compliance with immigration, privacy, customs, payroll, and employment laws and with tax requirements, particularly for corporate tax presence.

While the immigration law component here is vital—a globally mobile employee without the right work visa cannot legally work—at least the compliance imperative around immigration is well recognized. In addition to immigration law, cross-border employee assignments trigger a cluster of other thorny legal issues, issues of expatriate and "secondment" structuring, which are less understood. When mishandled, these other global mobility law issues can cause serious and expensive compliance problems.

(continued on page 5)

INTERNATIONAL LAW NEWS EDITORIAL BOARD

EDITOR-IN-CHIEF
RENEE DOPPLICK
Washington, D.C.

DEPUTY EDITORS
Albert Vincent Y. Yu Chang
C&G Law, Manila, Philippines

MICHAEL BUXTON DEVINE
Northumbria University Law School, Newcastle upon Tyne, and Magdalen Barristers' Chambers, Exeter, England

SECTION PUBLICATIONS OFFICER
Nancy Kaymar Stafford
Emory University, Atlanta, GA

IRA R. FELDMAN
Greentrack Strategies, Bethesda, MD

ANNE R. JACOBS
Alexandria, VA

GMELEEN TOMBOC
Sidley Austin LLP, Singapore

SECTION OF INTERNATIONAL LAW OFFICERS

CHAIR
STEVEN M. RICHMAN
Clark-Hill PLC
Location

CHAIR-ELECT
ROBERT L. BROWN
Affiliation
Location

VICE CHAIR
LISA RYAN
Affiliation
Location

SECRETARY/OPERATIONS OFFICER
JOSEPH L. RAIA
Affiliation
Location

IMMEDIATE PAST CHAIR
SARA P. SANDFORD
Affiliation
Location

REVENUE OFFICER
MARCOS RIOS
Affiliation
Location

BUDGET OFFICER
WILLIAM B.T. MOCK, JR.
Affiliation
Location

PROGRAMS OFFICER
MARCELA B. STRAS
Affiliation
Location

MEMBERSHIP OFFICER
PATRICK DEL DUCA
Affiliation
Location

LIAISON OFFICER
MAXIMILIANO J. TRUJILLO
Affiliation
Location

CONTACTS

SUBMISSIONS TO THE EDITORIAL BOARD
dopplick@ilaw.news

ADVERTISING REPRESENTATIVE
mjmrvica@mrvica.com

SECTION OF INTERNATIONAL LAW
intlaw@americanbar.org

ABA MEMBERSHIP
service@americanbar.org

REPRINT PERMISSIONS
americanbar.org/utility/reprint

ABA STAFF

Section Director	Christina Heid
Coordinating Editor	Lori Lyons
Web Coordinator	Karrie Dowling

International Law News (ILN) (ISSN 047-0813) is published quarterly as a service to its members by the Section of International Law of the American Bar Association, 1050 Connecticut Ave. NW, Suite 400, Washington, D.C. 20036. It keeps Section members informed about current developments in international law and important Section news. The materials published in *International Law News* reflect the views of the author and should not be construed to be those of the Editorial Board, the Section, or the ABA unless adopted pursuant to the Association bylaws. Subscriptions are free to Section members. To order nonmember subscriptions ($25), email orders@americanbar.org or call +1-800-285-2221.

Copyright © 2018 American Bar Association. All rights reserved.

Cover image copyright: 123rf.com | rawpixel

INTERNATIONAL LAW NEWS

CONTENTS

FEATURE ARTICLES

Advising Clients with Globally Mobile Workforces: Going Beyond Immigration Law
by Donald C. Dowling, Jr. — **1**

Have You Been Served? International Service of Process by Registered Mail
by Mark Wojcik — **12**

Interview with Daniel Ellsberg at the 2018 Annual Conference of the ABA Section of International Law
Interviewed by Jonathan Granoff — **16**

COLUMNS

Chair's Column — **3**

Perspectives from the Field — **18**

International Updates — **24**

Country Updates — **25**

NEWS

UN Special Rapporteur Comments on Challenges to Human Rights Law at ABA Midyear Meeting — **26**

International Legal Developments The Year in Review: 2017 — **30**

Meet Budget Officer Bill Mock — **31**

Meet the Diversity Fellows — **32**

Upcoming Events — **34**

Steven M. Richman (*srichman@clarkhill.com*) is a Partner at Clark Hill PLC, where he practices domestic and international commercial law, and is Chair of the ABA Section of International Law 2017-2018.

Chair's Column

Conferences are an opportunity to implement our mission of promotion of rule of law, of education of and contribution to the international legal community, as well as outreach to places where we do not regularly go. Rule of law, or more particularly, stability and respect for judicial process, remains essential to international business and the wellbeing of the international community. Our conferences continue to contribute to that, particularly through their quality of content, interactions, and broader impacts.

Annual Conference. We had a successful Section Annual Conference in April 17–21 in New York City, as well as our pre-conference Section Retreat in Princeton, New Jersey, and our post-conference ABA Day at the United Nations. The opening plenary, with world-class speakers involved in matters of reconciling the rule of law and management of global risk, resonated throughout the conference. Some of its themes were picked up by Dr. Daniel Ellsberg in his keynote at Thursday's luncheon. At Friday's luncheon, attendees—particularly those from outside the U.S. legal system—gained insights into how the Chief Judge of the Southern District of New York, and a federal bankruptcy judge, address issues of international and foreign law.

No one wanted to leave the Rainbow Room on Wednesday night until the lights kept flashing. The Bryant Park Grill, in the heart of the heart of New York City, pulsated with myriad conversations to conclude the conference, after which many attendees went to the after-hours location to dance the night away. In between, the agenda packed in a day of skills training across disciplines, a Pathways program, committee meetings, participation by our international partners—the International Association of Young Lawyers (AIJA) and the Union Internationale des Avocats (UIA)—in presenting panels, and scores of panels addressing cutting edge issues, from bitcoins to cyber security to humanitarian crises.

Singapore Conference. The Singapore conference is designed to be part of the ILEX visit to Jakarta and as part of presence in Southeast Asia. Focused on investor state arbitration, the Singapore conference is a beginning of a longer conversation among practitioners, businesses, government officials, and scholars to improve investor-state arbitration at a time when it has been the subject of debate, but its value to global commerce remains vital. It is also an opportunity to network with others from within the region.

South Africa Conference. The regional conference in Cape Town will fulfill a commitment to our Africa Committee and is part of the philosophy of maintaining a presence on that continent. It will focus on issues related to anti-bribery, ADR/arbitration, climate change, human rights, risk management, and more.

Copenhagen Conference. The Section has long had significant participation from Scandinavian attorneys, and the choice of a conference in Europe to be in Copenhagen is an effort to restore that participation. In consultation with the local bar, the subject matter for the conference is life sciences. The life science sector is amongst the fastest growing sectors, both economically and technically. The Section's life sciences conference in Europe will cover anticipated legal issues related to intellectual property, data protection, technologies, and litigation.

ABA Paris Sessions. Still to come are the Section's panel and participation at the Paris Sessions commemorating the seventieth anniversary of the Universal Declaration of Human Rights. We will focus on the continuing theme of corporate social responsibility and the fusion of public and private lawyers in the area of human rights.

ABA Annual Conference. We are also preparing for the ABA Annual Meeting in August in Chicago. The Section will organize and host the ABA's meetings with our distinguished guests from around the world in our annual roundtable, covering a variety of topics of current interest to the organized bar.

The Section's value, though, is more than the sum of its conferences. We often focus on conferences from the logistical standpoint, but it is important to note their broader political, economic, and social values. We rely on our committee work and the Section's overall mission to promote the Rule of Law. These visits and conferences must be seen as the beginning, or continuation, of a longer conversation that involves practitioners, businesses, government officials, and the organized bar as we pursue the Section's mission to offer assistance and training to, as well as learn from, each other across our areas of jurisdictions.

You are welcome to join us at our upcoming conferences and in advancing the Rule of Law. Every Section member, every individual who contributes to our committees, is part of that effort, and you are all to be recognized. You are the Section and the Section's achievements are your achievements. We look forward to having you involved in the year ahead and seeing you again soon. ◆

Steven M. Richman
Chair, ABA Section of International Law

"Rule of law, or more particularly, stability and respect for judicial process, remains essential to international business and the wellbeing of the international community."

About the ABA Section of International Law

Founded in 1933, the ABA Section of International Law is a leader in the development of policy in the international arena, the promotion of the rule of law, and the education of international law practitioners. It is the only ABA entity that focuses on the full range of international legal issues and is involved in a wide variety of substantive legal activities.

Advising Clients with Globally Mobile Workforces: Going Beyond Immigration Law

continued from page 1

Multinationals sometimes jump to the conclusion that there must be one best way to structure all international assignments. So they grab whatever expatriate package got used last time, change the names, make some tweaks, and move on. This approach skips over the vital step of tailoring the cross-border posting to meet the employer's human resources needs while complying with legal mandates. There are several different global mobility and expatriate assignment structures, and they are not interchangeable.

This article will help you determine who qualifies as an expatriate, what common types of expatriate structures are used, and how to select the best expatriate structure for an international assignment.

Who Is a Business Expatriate?

Not all globally mobile employees are business expatriates. Arrangements for international assignees who are not expats are easy to structure, while structuring assignments for bona fide expats can be complex. Before structuring any cross-border work assignment, the first step is to ascertain whether the mobile staffer is, or is not, an actual business expatriate. Colloquially, an "expatriate" is anyone who lives somewhere other than his native country. But here we are addressing business expatriates.

A business expatriate is someone originally hired to work in one country but later reassigned to work in a new overseas place of employment temporarily. A business expatriate expects to return home or be "repatriated" at the end of the assignment.

Two common global mobility terms are in effect synonyms for "expatriate" that betray the speaker's point of view: "inpatriate" and "third-country national." An inpatriate is an expatriate coming into a host country, while a third-country national is an expatriate not working at headquarters on either end of the assignment. For example, if the Paris office of a Kansas City-based multinational were to assign an employee to work temporarily at the company's Tokyo facility, the assignee would be an "expatriate" to her former Paris colleagues, an "inpatriate" to her new Tokyo colleagues, and a "third-country national" to human resources back in Kansas City. For our purposes here, she is an expat.

Who Is Not a Business Expatriate?

It is important not to confuse a business expatriate with a permanent transferee and to safeguard against false expatriates, those internationally mobile staff who do not meet our definition of business expatriate and therefore usually should not get structured as expats. Also watch for actual expats whom an employer misperceives to be non-expats.

In separating out who is and is not a genuine business expatriate, account for the concepts of permanent transferee, foreign hire, business traveler, and stealth/accidental expat. You also need to consider issues related to the place of employment, participation in an in-house expat benefits program, and whether the company is structured as a so-called "global employment company."

Donald C. Dowling, Jr.
ddowling@littler.com

Donald C. Dowling, Jr. is a Shareholder at Littler Mendelson PC in New York City. He is a former Programs Officer of the Section of International Law and past Chair of the International Employment Law Committee.

Permanent Transferee. An overseas assignee who does not expect to repatriate is a localized permanent transferee.

Foreign hire. Multinationals occasionally recruit candidates in one country to work jobs overseas. As some examples, recruiting on global websites attracts candidates in different countries. Construction contractors in the Middle East constantly recruit laborers and carpenters from Indonesia, the Philippines and other developing Asian countries. Silicon Valley technology companies frequently recruit graduates from top universities in India for jobs in California. American multinationals often recruit American security guards for jobs in the Middle East and American technicians for jobs at oil fields in Africa. All these employees are foreign hires, not business expatriates, because they work for their employer in just one country. They might be emigrants. They might need visas. Some of them might qualify for company expatriate benefit packages (paid housing and drivers, for example). But foreign hires are not business expatriates because they work for their employer in just one country. Their border-crossing status relates to recruitment, not employment. Avoid structuring foreign hires as expatriates.

Business Traveler. Some short-term global mobility assignments get staffed by business travelers who are not true expats. A business traveler remains employed and on the payroll of the home country employer entity, with a place of employment that remains the home country throughout the overseas assignment. Everyone recognizes that someone working overseas for just a few days or a couple of weeks is simply on an international business trip; but sometimes even a longer (yet still short-term) global assignment might also appropriately get structured as a business trip—even where the employer and assignee refer to the trip as an international "assignment" or foreign "posting," even where the employer provides expatriate benefits, and even where the host country requires a visa or work permit. Structure a short-term international assignment as a business trip whenever the home country will remain the assignee's place of employment during the posting.

Stealth/Accidental Expat. When a business traveler stays abroad too long, as a matter of host country law the place of employment at some point may shift to the host country and the would-be business traveler risks becoming a so-called "stealth" or "accidental" expatriate. Another stealth/accidental expatriate scenario is the internationally mobile telecommuter: An employer lets an employee telecommute from home locally, and at some point the telecommuter slips away (moving abroad and continuing to telecommute from a new country). Stealth/accidental expat status is an internal misclassification that can trigger legal problems under host country immigration, payroll, employment and "permanent establishment" law. As soon as a business traveler's or telecommuter's place of employment shifts abroad, consider reclassifying the employee as an expatriate.

What Are Ways to Spot a False Business Expatriate?

Place of Employment

The concepts of business traveler and stealth or accidental expat turn on "place of employment." Under the law of most countries, each employee has a single "place of employment" at a time with each employer ("place of employment" is a legal concept or status, analogous to "residence" and "domicile"). But ascertaining a given expat's place of employment can be difficult.

How long can we post a business traveler abroad before the host country becomes the "place of employment"?

The inevitable question that gets asked in the mobile employee contest is: *How long can we post a business traveler abroad before the host country becomes the "place of employment"*? There is no easy answer because "place of employment" is a construct of more than just time—in sharp contrast to the completely separate legal concept of tax residence, which usually gets triggered at 183 days worked in a country in a single tax year. Unlike tax residence, place of employment can attach in a matter of minutes: A new hire almost always acquires an in-country place of

International Law News
ABA Section of International Law
Your Gateway to International Practice

FEATURE ARTICLE

employment on the first morning on the job, and a transferee usually acquires an in-country place of employment on the first morning after the reassignment. The place of employment of a mobile employee moving from a home country to a new host country is a question not only of time worked in the host country, but also visa status, intended future repatriation date, place of payroll, and link between tasks worked and the local market. This said, after a mobile employee has worked in a host country for more than several months, that country might plausibly take the position it has become the place of employment, if only temporarily.

Practice Tip

*A **business expatriate** is someone originally hired to work in one country but later reassigned to work in a new overseas place of employment temporarily.*

A business expatriate expects to return home or be "repatriated" at the end of the assignment.

Watch for "false" expatriates.

Watch for synonymous legal concepts. Having said that "place of employment" is a discrete legal concept or status, this concept varies in some jurisdictions. Where European law applies, the Rome I Regulation 3 on choice-of-law controls; instead of "place of employment," Rome I looks to where an employee "habitually carries out his work." *See* EU Regulation 593/2008. United Kingdom case law in certain contexts looks to an employee's "connection" to the place of work or the "nature" of where the job is based. For our purposes here, principles like these are roughly synonymous with "place of employment."

In structuring a short-term global mobility assignment, decide whether the employer can plausibly maintain that the home country will remain the place of employment throughout the posting. When structuring a short-term assignee as a business traveler, guard against the stealth or accidental expat scenario.

In-House Expat Benefits Program

An expatriate benefits program is an organization's package of paid global mobility extras, such as moving expenses, housing allowance, tax equalization, international tax preparation, spousal support, children's tuition, car and driver, social club membership, hardship pay, flights home, expat medical insurance, repatriation costs, and immigration services. Not all business expatriates get to participate in expat benefits programs (think of telecommuters moving abroad for personal reasons). And not everyone who receives expat benefits is a true business expatriate (think of foreign hires recruited to work in "hardship" locations).

Many multinationals use the term "expatriate" to mean participant in their in-house expat benefits program (e.g., "Tiffany is transferring to our London office for a year, but she asked for the posting herself and we're accommodating her request—so she won't be an expat"). This usage lulls employers into misclassifying false expats who happen to be eligible for expat benefits and can lead to stealth or accidental expats who happen to be ineligible for expat benefits. It is best to avoid this dangerous usage. Instead, distinguish "structural expats" from "expat-benefits-eligible assignees."

Global Employment Company

Some multinationals employ corps of "career expats" who migrate from one posting to the next, spending little or no time working in any home country or headquarters place of employment. Sometimes these multinationals incorporate—often in a tax-advantageous jurisdiction like Switzerland or the Cayman Islands—a so-called "global employment company" (GEC) subsidiary with the *raison d'être* of employing and administering benefits for career business expats. GECs offer logistical advantages, particularly as to pension administration. Contrary to a widespread misperception, though, GECs are not expat structures unto themselves. (And a GEC cannot stop the mandatory application of host country employment protection laws.) The arrangements for an expat employee of a GEC ultimately must be structured just as any other expat.

What Are Common Expatriate Structures?

Once an employer understands which globally mobile employees are and are not actual business expatriates, the next task is to slot each actual expat into the most appropriate expat category—that is, select the most appropriate expat structure. Expatriate structures take different forms at different multinationals, but ultimately all business expats fit into or among four broad categories: foreign correspondent, secondee, temporary transferee/localized, and co-/dual-/joint-employee.

Foreign Correspondent

A "foreign correspondent" expatriate remains employed by and on the payroll of the home country employer entity while working abroad, rendering services from afar for the home country entity (not for some local host country affiliate or business partner). Foreign correspondent postings are easy to set up because nothing changes other than the place of employment (and other than that the expat might start receiving expat benefits). The challenge is that foreign correspondent postings risk violating host country immigration and payroll laws. A foreign correspondent may need a visa sponsored by some host country employer, and host country payroll laws may require the employer to provide reports and to make deductions, withholdings, and contributions to host country tax and social security agencies that the home country employer entity is not set up to make without a host country taxpayer identification number (even an outsourced payroll provider needs its customer's local taxpayer number).

One tool here is "shadow payroll," also called "zero payroll" and "mirror payroll." Some cooperating host country entity reports the foreign correspondent expat's income to local tax and social security authorities as if it were the payrolling employer, and then that entity and the employer do an inter-company reconciliation each payroll period, behind the scenes, perhaps with the employer paying for the shadow payroll service.

Secondee

"Secondment" means "employee loan." A seconded expatriate remains an employee only of the home country employer entity but gets lent out to work for a host country entity, usually an affiliate or business partner of the employer. The secondee might get payrolled by either the home or host country employer (or both, via a "split payroll"). Usually the host country employer, which we might call the "beneficial employer," reimburses wages and payroll costs to the home country "nominal employer." Some secondees stay on the home country payroll while the host country entity issues a shadow payroll 6 to comply with local payroll laws. But a true secondee is not a co-/dual-/joint employee, because a true secondee never gets privity of employment contract with the host country employer.

Temporary Transferee/Localized

An expatriate transferee or "localized" expat resigns from the home country employer, moves abroad, and gets hired and payrolled by a new (host country) employer, often an affiliate or joint venture partner of the original employer but sometimes a host country services company like a local office of Globalization Partners, Adecco, Manpower, or Kelly Services (or the expat might even become an independent contractor in the host country). The new host country employer usually extends retroactive service/seniority credit for past service with the home country employer and sometimes also pays some extra expat benefits–a so-called "local-plus" assignment.

While working in the new host country place of employment, a localized transferee expat renders services only for the new host country employer and does not retain privity of employment contract with the home country employer—other than perhaps an informal side letter or email outlining post-assignment repatriation expectations. The home country employer is not a co-/dual-/joint-employer because the expat formally resigned.

Of course, an expat transferee localization is only temporary. (A transferee who does not expect to repatriate is a "permanent transferee," not a business expatriate.) A localized expat (as opposed to a permanent transferee) expects someday to repatriate and re-localize back to the original home country location. A side-letter (or email) between the expat and the home country employer entity might memorialize this.

In practice, an employer intending to localize an expat should account for the risk that the would-be localized

Practice Tip

*An employer intending to **structure a secondment** should account for the risk that the would-be secondee could be argued to a co-/dual-/joint-employee employee simultaneously employed by both the nominal employer and the beneficial employer.*

expat could be argued to a co-/dual-/joint-employee simultaneously employed by both the current host-country employer and the former home-country employer.

Co-/Dual-/Joint-Employee

A co-/dual-/joint-employee expatriate is an expat simultaneously employed by two masters, the home and host country employer entities, essentially on a moonlighting basis. The employee works for two employers simultaneously or works a host country job actively while formally retaining status as "on leave" from the home country employer entity, with the home country employment arrangement suspended or "hibernating"—but not terminated. A co-/dual-/joint-employee expat may be payrolled by either the home or host country employer (or both, on a "split payroll") or may be on a "shadow payroll" actually paid by the home country employer while the host country employer complies with its jurisdiction's payroll laws.

- **Intended co-/dual-/joint-employment**

Ideally every co-/dual-/joint-employee expat arrangement gets structured overtly, with the expat either actively structured as an employee of both home and host country entities or else with the expat expressly on leave from the home country employer, leaving that employment relationship expressly "hibernating" but not severed. Sometimes the home and host country employers decide to use the co-/dual-/joint-employee structure to keep the expat enrolled in home country benefits programs or home country social security (e.g., under a social security totalization agreement certificate of coverage).

- **Unintended co-/dual-/joint-employment**

Too many co-/dual-/joint-employment expatriate arrangements get structured accidentally, either when an expat assignment is meant to be a secondment but the expat somehow enters an employment relationship with the host country employer or when an expat assignment is meant to be a temporary transfer (localization), but the parties fail to extinguish the home country employment relationship. A dismissed expat who ultimately wins the argument that he had served as an unintended co-/dual-/joint-employee could seek reinstatement or severance pay from the home or host country employer. These situations often get complex and expensive.

In practice, an employer intending to structure a secondment should account for the risk that the would-be secondee could be argued to a co-/dual-/joint-employee employee simultaneously employed by both the nominal employer and the beneficial employer.

How to Select the Best Expatriate Structure

Answering this depends on nuances of the particular expat's given situation and on the employer's strategic needs. Even within one multinational employer, different expats may get structured differently. Therefore, in drafting a given expat's assignment package, avoid reflexively copying the last expat's assignment package (unless the ideal structure for the current expat posting happens to coincide with what was the ideal structure last time). If, for example, the last expat was a secondee while this expat needs to be temporarily localized, then the secondee's assignment package is the wrong model for documenting this assignment.

Immigration

All countries impose immigration laws. An expat who does not happen to be a citizen or legal resident of the host country almost certainly needs a visa or work permit to work in-country. The visa and work permit

process often requires an in-country employer visa sponsor. The foreign correspondent and secondee expat structures may not work because they do not include any host country employer to sponsor the visa. (In a secondment, the host country beneficial employer may be willing to sponsor the visa, but, because it does not actually employ the expat, in some cases it will be ineligible to sponsor.) Also think through expat family visa issues. For example, some countries will not issue a spouse visa for a same-sex partner.

Payroll Laws

Most countries impose what we have been calling "payroll laws"—analogues to U.S. reporting, withholding, and contribution mandates as to employee income tax (federal and state), social security, state workers' compensation insurance, state unemployment insurance and federal unemployment tax. Even oil-rich countries like Qatar that did not used to impose payroll laws now do.

The headquarters team structuring a global mobility assignment that keeps an expat on home country payroll might be more focused on complying with home country payroll mandates than on host country payroll laws. But actually, host country payroll compliance may be more vital, because during the assignment the host country is the place of employment—the expat lives and works in the host country using its roads, sewers, garbage pick-up, and other services and is probably liable personally for host country income tax.

Imagine, for example, the employer of a foreign correspondent assigned from Rome to a temporary place of employment in Raleigh. The home-country Italian employer should comply with U.S. and North Carolina payroll laws and so should not illegally payroll its expat on an offshore Italian payroll that fails to report income to the IRS and other U.S. federal and state agencies. An employer based in Raleigh will face reciprocal compliance challenges when assigning someone to work in Rome.

Violating host country payroll laws by illegally paying an expat offshore can be a crime—indeed, it can be a felony in the United States under 26 U.S.C. § 7202. This is usually true even where the employer gets a certificate of coverage under a social security totalization agreement, because those certificates do not address income tax withholding and reporting.

In structuring expatriate payroll, consider vehicles like "split payroll" and "shadow payroll" that facilitate compliant payrolling. In many countries, structuring an expat as a foreign correspondent or secondee without a "shadow payroll" is effectively illegal because it violates host country payroll laws—but not always. Some countries' payroll laws obligingly exempt foreign employers that do not transact business locally—Guatemala, Ivory Coast, the United Kingdom, and Thailand are examples. Still other countries—France and Estonia, for example—offer special expat payroll registration procedures that let foreign employers comply with local payroll laws without otherwise registering to do business locally.

Permanent Establishment

A third vital legal issue in structuring expatriate assignments is avoiding an unwanted host country corporate and tax presence for a home country employer entity. "Permanent establishment" (PE) is a corporate tax presence that host country law imposes on a foreign entity held to be "doing business" locally in the host country.

The expat structure challenge is where host country law might deem a home country entity employing an expat working in the host country to be "doing business" in the host country because of the work the expat performs. The expat's in-country activities on behalf of the home country employer are said to trigger a PE. Even if the home country employer has a local sister entity registered to do business in the host country, an expat who is a foreign correspondent, secondee, or co-/dual-/joint employee might trigger a separate PE for the home country employer affiliate.

Imagine, for example, a Berlin-headquartered organization that directly employs a full-time highly compensated expat in Chicago but, otherwise, does little or no business stateside. If the German expat telecommutes, contributing to German matters, in German, from an apartment on Lake Shore Drive—making phone calls, receiving mail, occasionally meeting with traveling colleagues—might the U.S. IRS and Illinois secretary of state take the position the German company now "does business" in Illinois and so

must register with the Illinois secretary of state and file U.S. federal and state tax returns? If so, the German company would be said to have a U.S. PE. Its unlicensed U.S. operation might trigger fines and taxes. The reciprocal issue could arise in the outbound scenario—imagine, for example, a Chicago organization employing a full-time highly compensated expat in Berlin.

Documenting the Expat Assignment

This article provided the overview of who is and who is not a business expatriate, the common expatriate structures, and tips on how to select the best structure for an international assignment. In selecting among the four expat structures in structuring any given expatriate assignment, think through practicalities of the particular posting, like whether the expat will serve a home or host country entity, and which employer affiliate will fund compensation.

Then factor in three legal issues: immigration, payroll laws, and permanent establishment. How these three issues play out for a given expat should point to the most appropriate of the four expat structures. After factoring in the issues and selecting among the four expatriate structures, the next step will be to document the expat assignment to reflect the selected structure.

My article in the 2018 Summer Edition of *International Law News* will help you with that next step of properly documenting an expat assignment to ensure the selected expat structure is legitimate. ◆

An earlier version of this article was published by Littler Mendelson PC in October 2017.

Online Resources

- U.S. International Social Security Agreements by the U.S. Social Security Administration

Global Legal Solutions Provider

Section Global Alliance Member

FEATURE ARTICLE

Have You Been Served? International Service of Process by Registered Mail

By Mark E. Wojcik

The international service of process by registered or certified mail, return receipt requested, is a viable option for serving defendants in many countries around the world. Rule 4(f)(2)(C) of the U.S. Federal Rules of Civil Procedure allows service by mail, unless the law of the foreign country prohibits such service.

The United States is party to two treaties that deal with international service of process: the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (Hague Service Convention) and the Inter-American Service Convention on Letters Rogatory with its Additional Protocol (Inter-American Service Convention). The Hague Service Convention opened for signature on November 15, 1965 in The Hague, Netherlands. It has seventy-three state parties. The Inter-American Service Convention opened on January 30, 1975, in Panama.

Hague Service Convention

The U.S. Supreme Court reviewed the question of whether the Hague Service Convention allows service of process by registered mail in the case of *Water Splash, Inc. v. Menon,* 137 S. Ct. 1504 (2017).

Mark E. Wojcik
mwojcik@jmls.edu

Mark E. Wojcik is a law professor at The John Marshall Law School in Chicago and is the ABA Section of International Law Diversity Officer for 2017–2018. He is also a Fulbright Specialist at the Jigme Singye Wangchuck School of Law in Thimphu, Bhutan.

The Supreme Court, in a unanimous decision (with the exception of Justice Gorsuch, who did not participate in the case), ruled that the Hague Service Convention does not prohibit service of process by registered mail. Resolving a split among the federal circuit courts, the Court held that Article 10(a) of the Hague Service Convention allows service of process by mail so long as (1) the state where process was to be served did not formally object to the service by mail when it ratified the Hague Service Convention, and (2) service by mail is authorized under otherwise-applicable law.

Water Splash, Inc., a company producing aquatic playground systems, sued its former employee, Tara Menon, in Texas state court, alleging that she had started working for a competitor while she was still employed by Water Splash. Because the former employee lived in Canada, Water Splash got permission from the trial court to serve her in Canada by registered mail. After a default judgment was entered in favor of Water Splash, the former employee moved to vacate the judgment on the ground that she had not been properly served. The trial court refused to vacate the default judgment, but the Texas Court of Appeals reversed, holding that the Hague Service Convention prohibits service of process by mail. The Texas Supreme Court denied discretionary review, and the U.S. Supreme Court granted certiorari to resolve a split among the federal circuit courts. The Fifth and Eighth Circuits prohibited service by mail while the Second and Ninth Circuits allowed it.

The issue before the U.S. Supreme Court turned on Article 10(a) of the Hague Service Convention, which states that unless the state of destination objected, the Convention would not interfere with "the freedom to send judicial documents, by postal channels, directly to persons abroad." Articles 10(b) and 10(c) of the Convention did not address the ability "to *send* judicial documents" but "to *effect service* of judicial documents" by judicial officers or other officials. By using "send" rather than "effect service" in the provision addressing service by registered mail, did the Hague Service

Convention prohibit sending documents for the purpose of service of process?

Justice Alito wrote the opinion finding that the Hague Service Convention did not prohibit service by mail if the receiving state has not objected to service by mail and if service by mail is authorized under otherwise-applicable law.

The Supreme Court began its analysis with familiar cannons of construing treaties, namely that the Court would look to the treaty's text and the context in which the words were used. The Court found that there was no apparent reason why using the word "send" instead of "serve" would exclude the transmission of documents for the purpose of service. Indeed, the Court found it would be odd if a treaty known as the Hague Service Convention would exclude the service of documents. The Court rejected the former employee's argument that the Hague Service Convention did not authorize the service of process but only the service of "post-answer judicial documents." Because the ordinary meaning of the word "send" was broad enough to include the transmission of any judicial document, the Supreme Court found that the text and structure of the Hague Service Convention indicated that Article 10(a) encompassed service by mail.

The Court also considered what it called "[t]he only significant counterargument" that, unlike other provisions of the Hague Service Convention that used the word "service," Article 10(a) should have a different meaning because it did not use that word. The Court found that the argument failed because of the context in which the written words were used, that the word "send" was broader than "serve," and that the equally authentic French version of the Hague Service Convention used the world *adresser*, which has consistently been interpreted as meaning service or notice. Even if the term was ambiguous, the Court noted that it could then "look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." These additional tools of treaty interpretation resolved any ambiguity in favor of allowing service by mail.

It also mattered as to whether the receiving country objected to service by mail. The Supreme Court noted that, when Canada ratified the Hague Service Convention, it "[did] not object to service by postal channels."

The Court also noted that other countries, such as the Czech Republic (Czechia) did object to service by mail. If a country objected to service by mail, then process could not be served by mail.

The Supreme Court concluded that "the traditional tools of treaty interpretation unmistakably demonstrate that Article 10(a) encompasses service by mail." The Court emphasized that the Hague Service Convention did not affirmatively authorize service by mail, but that, so long as the receiving state had not objected when ratifying the treaty, the Hague Service Convention "[did] not 'interfere with . . . the freedom' to serve documents through postal channels." Service by mail would therefore be permissible under two conditions: (1) that the receiving state had not objected to service by mail, and (2) that service by mail was authorized under otherwise-applicable law.

Because the Texas Court of Appeals did not consider whether Texas law authorized service by mail, the Supreme Court vacated the Texas decision and remanded for that court to consider whether Texas law authorized service by mail.

The Supreme Court's decision may provide a useful roadmap for how the Court will interpret treaties and other international agreements. The Supreme Court did not cite the Vienna Convention on the Law of Treaties, which includes several provisions on the interpretation of treaties.

Although many U.S. courts and federal government agencies follow and cite the Vienna Convention on the Law of Treaties, the United States has only signed and not yet ratified this so-called "treaty on treaties." The Supreme Court's decision also does not cite the rules on treaty interpretation found in the *Restatement (Third) of the Foreign Relations Law of the United States.*

Table: Hague Service Convention – Status of Service by Mail by Country

Countries Not Objecting to Service by Mail	Countries Objecting to Service by Mail	Countries with "Qualified Opposition"
Albania, Andorra, Antigua and Barbuda, Armenia, the Bahamas, Barbados, Belarus, Belgium, Belize, Bosnia and Herzegovina, Botswana, Canada, Colombia, Costa Rica, Cyprus, Denmark, Estonia, Finland, France, Hong Kong (China), Iceland, Ireland, Israel, Italy, Japan, Kazakhstan, Luxembourg, Macau (China), Malawi, Morocco, the Netherlands, Pakistan, Portugal, Romania, St. Vincent and the Grenadines, the Seychelles, Spain, Sweden, the United Kingdom, United States	Argentina, Bulgaria, the People's Republic of China (except for Hong Kong and Macau), Croatia, the Czech Republic, Egypt, Germany, Greece, Hungary, India, Kuwait, Lithuania, Malta, Mexico, the Republic of Moldova, Monaco, Montenegro, Norway, Poland, the Russian Federation, San Marino, Serbia, Slovakia, South Korea, Sri Lanka, Switzerland, Turkey, Ukraine, Venezuela	Australia, Latvia, Slovenia, Vietnam

Inter-American Service Convention and Additional Protocol

Lawyers looking to serve parties in Argentina, Brazil, Chile, Colombia, Ecuador, Guatemala, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela should note that the Inter-American Service Convention and its Additional Protocol also do not expressly allow service by mail. When ratifying the Hague Service Convention, Argentina, Mexico, and Venezuela each objected to service by mail. Colombia did not object to service by mail. The other countries are not parties to the Hague Service Convention.

Even where service by mail is not expressly prohibited, lawyers should consider what effect such service might have when later trying to enforce a U.S. judgment in that other country. If service was made on a foreign party in violation of local law, it likely will be impossible to enforce a U.S. judgment against that party.

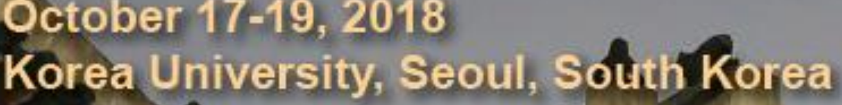
Practitioners can learn more about the Convention on the Hague Conference on Private International Law website (hcch.net). It includes updated information on which countries have filed reservations to service by mail. The website also includes model forms, practical operation documents, and information on seminars on the Hague Service Convention.

Another resource for lawyers is the International Judicial Assistance information from the U.S. State Department, which covers the Hague Service Convention and the Inter-American Convention and its Protocol. The website includes country-specific information on not only service of process but also obtaining evidence, enforcing judgments, authentications and apostilles, and other types of judicial assistance. ◆

Online Resources

- Inter-American Convention on Letters Rogatory and Additional Protocol
- Hague Conference on Private International Law
- International Judicial Assistance by the U.S. State Department

The New Engine of Growth in Asia Conference: Investment and Technology



ambar.org/silkorea2018

Hosted by

Platinum Sponsors

International Law News
ABA Section of International Law
Your Gateway to International Practice

FEATURE ARTICLE

Interview with Daniel Ellsberg at the 2018 Annual Conference

By ABA Media Relations

Dr. Daniel Ellsberg (right), former military analyst who leaked the Pentagon Papers in 1971, was interviewed by Jonathan Granoff (left) at the ABA Section of International Law Annual Conference on April 19, 2018.

Daniel Ellsberg is the former high-level military analyst and whistleblower in the United States whose distribution of The Pentagon Papers in 1971 to several newspapers documented the U.S. role in Indochina from World War II through around 1968 and suggested that four U.S. presidents knowingly misled the American public about U.S. involvement. His trial was dismissed due to government misconduct against him, which led to the conviction of White House personnel and figured in the proceedings against President Nixon.

A half century later, Daniel Ellsberg, perhaps America's best-known whistleblower, still has a story to tell and a cause to articulate. The 87-year-old Ellsberg, a former Pentagon official most closely related to the 1971 leak of the Pentagon Papers, provided a history lesson of sorts to a packed room at the ABA Section of International Law Annual Conference on April 19, 2018 in New York City.

Interviewed by **Jonathan Granoff**, Chair of the Section of International Law's Task Force on Nuclear Nonproliferation and president of the Global Security Institute, Ellsberg recalled how his thinking evolved over a few years about the veracity of the U.S.

government and outlined the factors that came into play in leaking the classified documents to the media. Ellsberg was charged with 12 felony counts and faced 115 years in jail before U.S. District Judge William Matthew Byrne Jr. dismissed the case in mid-trial for what the judge termed "improper government misconduct" related to a warrantless search of Ellsberg's psychiatrist's office.

"You represent courage in action," Granoff told Ellsberg.

But, as Ellsberg said, that was not always the case. He recounted how he had little inclination to release these secrets until he met some of the 5,000 young Americans, many peace activists, who decided to go to jail rather than fight in the Vietnam War. He singled out two—Randy Kehler and Bob Eaton—as fueling his decision to make a stand.

Premier Media Partner

GETTING THE DEAL THROUGH

Online Media Partners

Educators
Advisors
Publishers

Even though government officials said there were no plans to expand U.S presence in Vietnam in the mid-60s, "the Pentagon was totally involved in plans of widening the war," said Ellsberg, who was a defense analyst for the RAND Corporation at the time of the leak. "On the ground and in the air. We were being misled."

"To me, unjustified homicide is murder, and I had been part of that," he said of his role in assisting war preparation. "Then I came to the major point of what to do about it."

Around that time, Ellsberg said he "came face to face" with young Americans like Eaton and Kehler at a conference. "It struck me like a thunderbolt. For the first time I thought about trying to end the war from the inside. I thought, what can I do to shorten this war now that I am willing to go to prison?"

He leaked the Pentagon Papers first to *The New York Times* and then to *The Washington Post*, an effort that was chronicled in the recent movie "The Post," with Meryl Streep and Tom Hanks. While pleased with how he was portrayed, Ellsberg noted that the movie producers took some editorial liberty. "It's a Hollywood movie; it is not a documentary," he said.

Ellsberg's recent book, *The Doomsday Machine, Confessions of a Nuclear War Planner*, provides a behind-the-scenes collection of detailed descriptions of global near-calamities, flawed launch protocols and the government's own chilling estimates of the potential carnage following a nuclear conflict. He said Vietnam was a past catastrophe of his lifetime. The ramification of a nuclear buildup is the one he fears most now.

Ellsberg said the world, including the United States, "will not escape" calamity "without more moral courage in this country." ◆

Perspectives from the Field

Perspectives from the Field: At the Crossroads of Public and Private International Law

This year's ABA Section of International Law Annual Conference held in New York City in April 2018 had the theme, "At the Crossroads: The Fusion of Private and Public International Law." The conference, co-chaired by Birgit Kurtz, Hedwin Salmen-Navarro, Ken Rashbaum, and Deniz Tamer, brought together close to 1,000 legal professionals from fifty-two countries and thirty-nine U.S. states for five days of programming, interactive skills training, committee business meetings, and networking events and receptions.

In more than seventy CLE-programs, speakers explored the relationship between public and private international law, including a wide range of overlapping and emergent areas in which these previously distinct fields are merging and the drivers behind these trends. Major themes included the roles of multinational corporations, globalization, and technology in influencing and shaping the evolution of international law. Insightful presentations by speakers showed the growing desire for comity from public international law to be infused within private international law. Speakers also highlighted how international trade, transboundary networks, and the digital age, from cryptocurrencies to the cloud, are challenging historical notions of state action and responsibility.

Sessions on corporate social responsibility, investor-state arbitration, the digital economy and data privacy, and international trade demonstrated how human rights, which have been largely codified within public international law in treaties among states, are increasingly relevant and growing in prominence within private international law.

Skills-oriented programs for newly admitted through experienced attorneys and interactive exhibits by sponsors provided practical information for attorneys to use in their international legal practice to prepare them for success in today's changing environment. Particular attention was given to the implications across the varied civil and common law jurisdictions and to areas where public and private international law are fusing. Attendees learned how to navigate the evolving landscape of accepted choice-of-law principles and the application of foreign laws within varying jurisdictions. They received valuable dos and don'ts for international investigations, arbitration clauses, procurement, employment structures for global workforces, and cross-border tax planning.

The conference programs and networking events spurred a lively exchange of ideas among diverse lawyers from around the world on how the interplay of public and private international law is transforming the global landscape. The following perspectives from a few speakers reflect a slice of those conversations, and we look forward to continuing the dialogue throughout the year during our Section activities.

Copyright: dotstock/ 123rf stock photo

Perspectives From the Field

Katrin Hanschitz
Partner, KNOETZL, Vienna, Austria

"Certainly one of the most astonishing aspects of U.S. M&A deals for EU-based lawyers is that an astounding 94 to 96 percent of all publicly announced mergers over $ 100 million attracted at least one lawsuit, with an average of seven lawsuits per merger in 2013. Since the Corwin and in particular the *Trulia* rulings, shareholder lawsuits have dropped very significantly in Delaware. How U.S. federal and state courts are going to deal with the increased merger challenges, including competing lawsuits, that have shifted to them due to the Delaware rulings will be interesting to follow. By contrast, while M&A litigation seems set to remain lucrative for lawyers in the United States, the strict transparency obligations that the EU regulatory framework imposes on merger transactions in the EU and the limited opportunity for shareholders to challenge merger transactions makes merger (class) actions relatively rare in the United Kingdom and on the continent. In recent legislation the EU has further increased the emphasis on advance shareholder review of transactions, with an EU Directive introducing mandatory shareholder approval and increased transparency obligations for all related-party transactions." ❖

Jose Martin
Of Counsel, Squire Patton Boggs
Miami, Florida

"As cooperation between countries increases and jurisdictions adopt similar approaches to combating domestic and transnational corruption, are we ensuring sufficient protections for individuals and their due process rights? By emphasizing the importance of corporate cooperation, we risk minimizing the negative impact internal corporate investigations may have on the rights of employees. As companies are encouraged to disclose the results of their internal investigations and identify those individuals involved, we should not lose sight of an employee's right against self-incrimination." ❖

Ronald Machen
Partner, WilmerHale
Washington, D.C.

"Cross-border enforcement has become an area of significant complexity and legal exposure for many players, as well as an area of increased cooperation between nations on enforcement. I expect this trend to continue in the future. It is becoming the rule rather than the exception for cases to span multiple countries, bringing together law enforcement personnel and regulators from numerous countries and jurisdictions. Today, multinationals must be concerned not only about potential exposure under U.S. anti-corruption laws but also about exposure under the laws and regulations of Europe, Asia, and the Americas.

Transnational

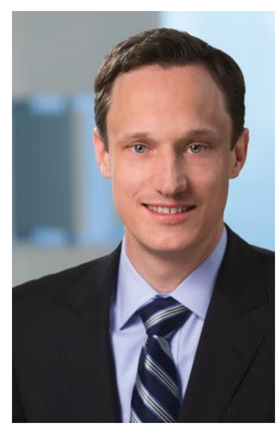
Perspectives From the Field

Just last month, U.S. and French authorities announced the $1 billion resolution of an enforcement action against Société Générale, S.A., and its wholly owned subsidiary for violating the FCPA. This joint action, which will require payment of penalties to both the United States and France, was the first coordinated resolution between the two countries, and appears to have been made possible by the recently enacted "Sapin II" law in France, which strengthened the authority of French law enforcement to pursue such cases. We can be sure, however, that these types of resolutions will become even more commonplace as an increasing number of jurisdictions develop and strengthen their own anti-corruption laws." ❖

Kateryna Gupalo
Partner, Arzinger
Kyiv, Ukraine

"Earlier, until 2014, the fight against corruption in Ukraine could be characterized by the saying 'Fighting corruption in Ukraine is like fishing on the Discovery Channel: catch and release.' In other words, investigations into corruption offences were more like giving the appearance of a fight against corruption both in society and amongst the international community. However, after the Ukrainian Maidan Revolution in 2014, there have been important changes in terms of substantial amendments to the legislation and in the practical approach.

Namely, a new agency for combating corruption was set up at the top level. As just mentioned, the existing system of law enforcement agencies was not effective in combating corruption. Therefore, the establishment of the National Anti-Corruption Bureau of Ukraine, as well as of the Specialized Anti-Corruption Prosecutor's Office, was one of the first tasks for the fight against corruption. Both agencies have the task of investigating corruption cases at the top levels, as well as supporting the state prosecution in court." ❖



Nicholas M. Berg
Partner, Ropes & Gray
Chicago, Illinois

"As foreign regulators dramatically increase their anti-corruption efforts, cross-border enforcement has become the new norm, creating investigations of unprecedented reach and complexity. The scale and impact of these investigations has spurred citizen movements against corruption and overturned regimes. Nowhere has this been more true than in Latin America. The Lava Jato investigation and its progeny have uncovered significant cases of corruption throughout Latin America, and led to the downfall of politicians throughout the regime. I expect enforcement in LatAm and globally to continue to expand over the next several years, as regulators around the globe increase both informal (e.g., via Whatsapp) and formal information sharing mechanisms.

While the U.S. has been, and will likely continue to be, the world leader in investigating and prosecuting corruption, recent actions taken by enforcement authorities in Brazil, the U.K., Switzerland, the Netherlands, Malaysia, and even France show that anti-corruption enforcement has gone global." ❖

Anti-Corruption

Perspectives From the Field

Data Privacy and Data Security

Cassandre Piffeteau
Senior Associate, D'Alverny Avocats
Paris, France

"The European General Data Protection Regulation, known as GDPR, came into force on May 25, 2018. This new regulation has a significant impact on all companies involved in the processing of personal data, including outside the EU. It aims at redressing the balance in favor of individuals. It establishes measures to ensure the protection of natural persons in relation to the processing of personal data, described as a fundamental right. It strengthens the right to bring enforcement actions under the GDPR's own rules on jurisdiction. Processors located outside the EU and conducting business in the EU fall into its territorial scope. GDPR also applies in places where EU Member State law applies by virtue of public international law.

Every lawyer is used to processing sensitive personal information concerning their clients, such as data relating to offences and criminal convictions, billing information, and so on. Although the principle of confidentiality is rooted in the minds of all lawyers as a fundamental principle, it is not certain that all lawyers and law firms have taken the measures of the European reform that requires, beyond principles, to take concrete steps to ensure client data protection. Among your checklist, ask yourself whether you have a data representative in the EU, an IT system to protect the security of your clients' data, and attorney services agreements that provide sufficient information about the collected data, the purposes of this collection, access procedures, and your clients' rights under the GDPR, including the right to be forgotten and the right to data portability." ❖

Hanim Hamzah
Regional Managing Partner, Zicolaw Network
Singapore

"Just as data sharing to some is identity-thievery to others, the EU GDPR can be protection to some but protectionism to others. This underlying concept is true worldwide. Domestic data protection laws have consequences within and beyond the boundaries of individual countries. Knowledge of what can or cannot be done is crucial to innovation and to avoiding extensive penalties for data misuse, mishandling, and breaches. As the only legal network located in all ten countries of the ASEAN region, we are cognizant of the challenges of compliance vis a vis ensuring healthy competition among the world's fastest-growing and most open data markets." ❖

Online Resources

- European Union General Data Protection Regulation (GDPR)
- GDPR: Rules for Businesses, published by the European Commission

Perspectives From the Field

International Trade

Vera Kanas Grytz
Partner, TozziniFreire Advogados
São Paulo, Brazil

"Brazil's view on trade defense measures has suffered a great shift during the past years. From 2011 to 2014, in an agenda led by the Ministry of Industry, Foreign Trade, and Services, trade defense measures were seen as an instrument of industrial policy, with great support to the application of anti-dumping duties.

Since 2015, however, under a policy led by the Ministry of Economy, trade defense instruments began to be seen as protectionist measures in which the application of duties should be limited and tempered by analysis of inflationary impacts, competition concerns, and other public interest issues.

CAMEX, the ministerial and political body that decides on the application of trade remedies and in which both the Ministry of Industry and the Ministry of Economy participate, has now to deal with the challenges posed by the need to analyze these public interest concerns and by the adoption of a position that is contrary to the global trend of increased application of antidumping and other trade remedies." ❖

Jing Zhang
Associate, Mayer Brown
Washington, D.C.

"Companies' global supply chains will be challenged by expansions of U.S. trade remedies." ❖

State Immunity

Holger Bielesz
Partner, Wolf Theiss Rechtsanwalte GmbH & Co KG
Vienna, Austria

"In principle, it cannot be excluded that European Member States could become defendants in U.S. federal courts under the Justice Against Sponsors of Terrorism Act (JASTA). As JASTA extends the scope of the terrorism exception to the jurisdictional immunity of foreign states, this law has generated significant debate. Although the threshold for the exemption from state immunity under the JASTA is fairly high, it is not merely theoretical, in particular when you look at the 9/11 attacks, where a clear link had been established between the perpetrators and Germany, where the so-called 'Hamburg cell' had been identified." ❖

Perspectives From the Field

Ava Borrasso
FCIArb, Ava J. Borrasso, P.A.
Miami, Florida

"No doubt, enforceability of a final award is a key factor for parties selecting international arbitration for commercial disputes. But parties have increasingly recognized the need for interim relief to insure the ultimate award is collectible and to support the arbitration proceeding itself. The decision as to where to pursue that relief depends, in large part, on the nature of the ultimate relief sought, applicable law, and the terms of the underlying arbitral rules or institution.

For example, courts have issued a variety of relief in support of arbitration proceedings, including procuring and preserving evidence, entering injunctive relief, attaching assets or equipment or mandating fulfillment of the terms of an arbitration agreement by compelling arbitration or entering an anti-suit injunction.

Courts continue to support arbitration despite the development and evolution of procedures within the arbitration process itself, like emergency or interim relief ordered by tribunals. While the enforceability of emergency and interim orders is a matter of some dispute among jurisdictions, these orders are becoming more common. Voluntary compliance with such orders appears relatively high given the potential impact noncompliance can have in a pending arbitration. The treatment of these measures in both courts and tribunals will be of interest to practitioners as their use continues to develop." ◆

Arbitration

International Updates

European Union General Data Protection Regulation (GDPR) Enters Into Force

The European Union General Data Protection Regulation (GDPR) enters into force on May 25, 2018 in EU Member States. It imposes data privacy requirements and replaces the Data Protection Directive 95/46/EC. It applies to the data of individuals within the EU. It also applies to all companies, within and outside the EU, that process or store the personal data of individuals in the EU.

Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS (MLI) Coming Into Force

The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Sharing enters into force on July 1, 2018. The treaty is expected to impact more than 1,200 bilateral tax treaties worldwide and allow for strengthening the protections against tax avoidance by multinational companies.

United Nations International Law Commission Meets for 70th Session

The 70th Session of the International Law Commission (ILC) of the United Nations will be held April 30 to June 1 2018 and July 2 to August 10, 2018. The theme is "70 years of the International Law Commission—Drawing a balance for the future." The ILC will address immunity of State officials from foreign criminal jurisdiction, interpretation of treaties, provisional application of treaties, customary international law, the protection of the environment in relation to armed conflicts, protection of the atmosphere, *jus cogens*, and succession of States in respect of State responsibility.

United Nations Commission on International Trade Law (UNCITRAL) Holds 51st Session

The 51st Session of the United Nations Commission on International Trade Law (UNCITRAL) will be held June 25 to July 13, 2018. UNCITRAL will consider adopting an international instrument on international commercial mediation, a model law on cross-border recognition and enforcement of insolvency-related judgments, and a legislative guide on key principles of a business registry. Working Groups will provide updates on projects related to investor-state dispute settlement reform, e-commerce, and security interests.

60th Anniversary of the New York Convention

This year marks the 60th anniversary of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, known as the New York Convention. It establishes standards for the recognition and enforcement of foreign and non-domestic arbitral awards. UNCITRAL provides technical assistance for the implementation of the Convention, including training activities for judges and legal practitioners, interpretation guidance, and a library of more than 2,500 decisions from 60 jurisdictions. NewYorkConvention.org.

International Court of Justice Elects New President

The International Court of Justice (ICJ) judges elected Judge Abdulqawi Ahmed Yusuf to serve as President of the Court and Judge Xue Hanqin to serve as Vice-President, beginning February 6, 2018. In February, four judges commenced another nine-year term after being reelected, and one judge, Judge Nawaf Salam, joined the Court.

International Law News
ABA Section of International Law
Your Gateway to International Practice

Country Updates

Chile

The Section of International Law and the Section of Antitrust Law in April jointly submitted comments on the Chilean Internal Guidelines for the Submission of Criminal Claims for Cartel Offenses. The Sections offered these comments in the hope that they will assist the National Economic Prosecutor's Office (Fiscalía Nacional Económica (FNE) in further refining the Guidelines. These views are presented only on behalf of the Section in accordance with ABA Blanket Authority Policy. The comments were not approved by the ABA House of Delegates or Board of Governors and thus should not be construed as representing the policy of the American Bar Association. Read the comments.

India

The Section of International Law and the Section of Antitrust Law in January jointly submitted comments on the White Paper of the Committee of Experts and the Ministry of Electronics and Information Technology on a Data Protection Framework for India. The White Paper will help support the drafting of a data protection bill. The comments provide recommendations for further modernizing and harmonizing with international data protection laws, norms, and practices. Read the comments.

Mexico

Mexico enacted a Law to Regulate Financial Technology Companies on March 9, 2018. The law authorizes the Central Bank to regulate "virtual assets," which includes cryptocurrencies, such as bitcoin, and virtual payment systems, such as those used in crowdfunding and gaming. The law aims to prevent money laundering. Read the law (in Spanish).

Singapore

Singapore enacted a cybersecurity law on March 2, 2018. The Cybersecurity Act establishes the legal framework for oversight and maintenance of national cybersecurity, including the protection of critical information infrastructure within eleven critical sectors identified in the First Schedule of the Act. It empowers the Commissioner of Cybersecurity to investigate cybersecurity threats and incidents and establishes a framework for sharing cybersecurity information across the public and private sectors. The law provides a licensing framework for cybersecurity service providers. Read the Explanatory Statement, the FAQs, and the law.

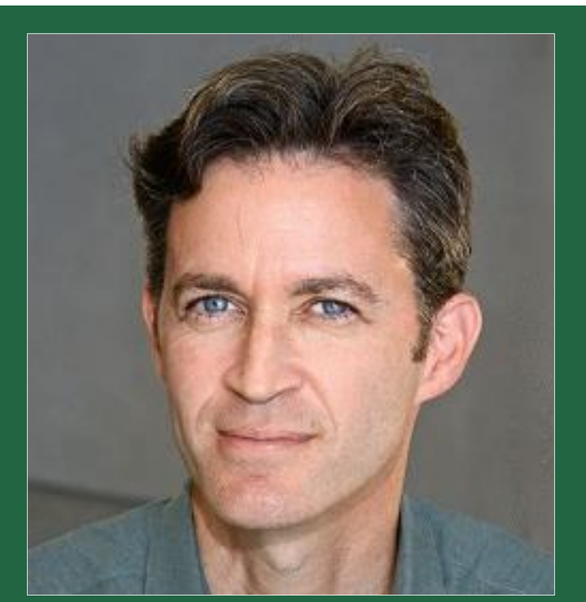
United Arab Emirates

A new Arbitration Law is expected to soon come into force. Federal Law No. 6 of 2018 was released on May 3, 2018. Upon publication in the Official Gazette of the United Arab Emirates it will enter into force the following month. It aims to modernize the domestic legislative framework for arbitration and harmonize with international practice. It is based, in part, on the UNCITRAL Model Law on International Commercial Arbitration. The Emirates Maritime Arbitration Centre in Dubai provides a pre-publication version in Arabic.

United Kingdom

The Section of International Law and the Section of Antitrust Law in May jointly submitted comments on the public consultation documents issued by the Competition and Markets Authority entitled Guidance on Requests for Internal Documents in Merger Investigations. The Sections provided recommendations for ways to enhance the effectiveness of the proposed Guidelines and their conformity with international best practices. Read the comments.

UN SPECIAL RAPPORTEUR COMMENTS ON CHALLENGES TO HUMAN RIGHTS LAW AT ABA MIDYEAR MEETING



David Kaye is a Clinical Professor of Law at the University of California, Irvine, School of Law. He teaches international human rights law and international humanitarian law and directs a clinic in international justice. His research and writing focus on accountability for serious human rights abuses and the law governing use of force.

Remarks by David Kaye, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, at the ABA Human Rights Luncheon on February 5, 2018 at the ABA Midyear Meeting in Vancouver, Canada.

Thanks to Mike Pates and Betsy Andersen. It's a real honor to follow people like Aryeh Neier, Thomas Buergenthal, Elissa Massimino, Patricia Williams, and others, real heroes of the human rights movement in the United States.

Human rights lawyers have indeed been at the vanguard of social and legal change for generations, both in North America and around the world. Without Judge Theodor Meron, we may not have had the development of the war crimes tribunals for the former Yugoslavia and Rwanda in the early 1990s. Without Aryeh Neier, the power of the Helsinki Process—so vibrant and compelling in the 1970s—may not have consolidated into today's global human rights movement through Human Rights Watch and Open Society. Without Shirin Ebadi, Iranian advocates may have lacked the global language to advocate for rights in the Islamic Republic of Iran. Without Asma Jahangir, Pakistan's human rights movement would have lacked a powerful voice for rule of law in the country and around the world.

Without many of you in this room, the ABA would not have a dedicated Center for Human Rights, injecting global norms, norms that bind the United States, into the practice of all sorts of lawyering in the United States.

These are just a few of the lawyers, lawyers who considered themselves human rights lawyers, who made and are making substantial change globally and locally.

As a category of professionals, acting within established human rights institutions, or within governments, or within law firms and acting pro bono, we as human

rights lawyers have mastered the rules that govern state behavior. Indeed, we have often drafted those rules, negotiated them, interpreted them, and built the institutions that enforce them.

We have quite a bit to be proud of—if not our own work, the work of those we consider our mentors, heroes, or predecessors.

And yet, here we are, at a moment of severe challenge to the framework of human rights law. I do not intend to make a political talk; I want to spell out what I see as five major challenges to the human rights movement at home and abroad today.

But, of course, it is also impossible to ignore the fact that the foundations for human rights law—a system of institutions that instantiate the rule of law, governed by individuals chosen through fair democratic process and implement the standards of rule of law, due process, and nondiscrimination —are at risk everywhere, including the United States.

I want to spell out what I see as five challenges and then conclude with what are hopefully some reasonable steps forward to protect the gains made by human rights lawyers over the past fifty years or so.

FIRST: I want to focus on the United States. The challenge we face, as American human rights lawyers operating within the United States, is political and legal. Notwithstanding the fact that Eleanor Roosevelt led the effort to adopt the Universal Declaration of Human Rights, we are constantly fighting a battle for relevance. We have to struggle with the very notion of human rights as a cognizable subject in American law and politics. So many of our colleagues, in practice and the academy, imagine human rights to be a political category, a subject of international law that requires "air quotes" around "law."

The misunderstanding of human rights as political has been a challenge for American lawyers for decades. When the George H.W. Bush administration—to its great credit, let me emphasize—transmitted to the Senate the International Covenant on Civil and Political Rights in 1992, one of the principal arguments for ratification was the impression U.S. engagement would have on states just emerging from Soviet domination. Membership in the ICCPR would give the United States a strong basis to urge real democratization and rule of law in the former Soviet space. It was sold to the Senate as a tool for foreign policy rather than a mechanism to bind federal, state, and local authorities to global standards. After all, as both Presidents Bush and Carter, who sought ratification in the late 1970s, said, ratification would require no legislative enactment by the United States.

Ratification embedded that political stance in our participation in the central civil and political rights document of international law. But it also embedded into our legal system a basic flaw: because the ICCPR was expressly seen as non-self-executing, it would be up to Congress to provide individuals with a cause of action under it. And, of course, Congress never did that. As a result, human rights lawyers in the United States cannot generally rely on the treaties of human rights law—the few the United States has ratified—to pursue legal claims in U.S. courts. Human rights thus becomes a subject of foreign behavior, not our own. We lose the hard-edged development of legal doctrine in our own system because we don't test our claims about human rights law in our own courts.

SECOND: The second challenge is related to the first. The United States is simply a limited player in the global development of human rights law, its interpretation, and enforcement worldwide. For in addition to our failure to implement legal norms domestically, we resist adjudication or evaluation globally. We do not accept the jurisdiction of the Inter-American Court of Human Rights, for instance, or the competence of the Human Rights Committee to evaluate claims against the United States.

Meanwhile, the European Court of Human Rights, the Inter-American Court of Human Rights, and now the African Court of Human and People's Rights (not to mention sub-regional human rights courts in West and East Africa) are pushing forward a human rights agenda. Those courts are establishing a common vocabulary for human rights adjudication, one from which the United States is largely absent.

This is largely a challenge for American lawyers and policymakers. But it also a global challenge insofar as it suggests a break among those who implement human rights law as human rights law—and those develop an entire universe of doctrinal thinking around human

rights law—and those, like the United States, that do not. It suggests an attenuation of the shared community of values that the United States has long promoted, and it undermines the ability of the United States to help shape the future development of human rights law.

THIRD: That leads to the third challenge I want to note, the stresses on the political institutions of human rights law today. The United States remains engaged in the bodies of human rights interpretation and enforcement at the political level, such as the Organization for Security and Cooperation in Europe and the Human Rights Council. Our diplomats make human rights-sounding arguments there. But again, these are places where we are largely concerned about the behavior of others, not ourselves (excepting particular moments such as periodic review).

Even so, these institutions are under stress. The makeup of the Council, for instance, can easily be criticized for its inclusion of obvious human rights violators, some egregiously so. The U.S. Ambassador to the UN, Nikki Haley, has repeatedly warned of the possibility that the United States would withdraw from the Council because of its treatment of Israel.

Despite these threats to the Council's credibility, it provides valuable tools for human rights lawyers worldwide: Universal Periodic Review gives us the opportunity to engage in shadow reporting across a range of civil, political, economic, cultural, and social rights; the Special Procedures system gives individuals around the world an address within the UN system to raise serious human rights violations outside the normally politicized environment of the Security Council, General Assembly, or Human Rights Council; the High Commissioner for Human Rights has a remarkable platform to call out bad behavior; and numerous commissions of inquiry launched or managed by the Council, dealing with such issues as North Korea and Syria, have highlighted major human rights abuses. Criticism is important for this system, but walking away from it, leaving it to be dominated by violators, or bringing it crumbling down will cause needless damage to defenders worldwide.

FOURTH: The fourth challenge I want to address is different substantively but also connected to the problem of U.S. ambivalence to human rights law as law. The substantive challenge is the remarkable power of corporate entities in areas foundational to democratic practice. Here, I am talking about the power of social media and search engines, and their global dominance outside of China and (mostly) Russia.

To a large extent, I think that these companies have been engines for remarkable progress in the field of access to information and freedom of expression. But the sweet story of community and connectivity has been overtaken, for good reason, by all the ills of the Internet, whether it's fake news and propaganda, or harassment and abuse, or the hatefulness of misogyny, racism, anti-Semitism, and so forth. The companies have exacerbated the problems not necessarily by their substantive policies but by the slowness to understand that real transparency is essential to understanding the role they play in democratic and authoritarian societies alike. Indeed, the failure of transparency has helped authoritarians as they aim to crack down on activity online.

Here's where I want to connect the human rights challenge I mentioned. I think that one of the results of the American resistance to the vocabulary of human rights law—indeed, to its reality as an instrument of legal change and as a legal framework—can be seen in the slowness of the American companies to adopt terms of service and community standards that resonate with communities beyond the United States. Think about them as global actors. Facebook, for instance, has over 2 billion active users, and only about 200 million of them are in the United States. These are global actors, for which global norms should be central. But, in part because human rights law, let alone international law, is largely untaught in our law schools or discussed in major public or judicial environments, the leaders of these companies don't immediately turn to human rights as a tool for shaping their environments.

FIFTH: Finally, I want to note that the human rights challenges we face differ from previous generations in one important respect. In the past—perhaps the distant past, but still—multilateral treaty-making would be a valuable and effective way to promote progressive norms or to codify emerging ones. Today, however, there are diminishing possibilities—to put it gently—for human rights lawmaking as a matter of treaty law.

Moving forward, and in brief, I want to put forward three recommendations for us as human rights lawyers:

1. **State-level implementation.** As noted, the future for human rights implementation in the United States does not run through Congress. It runs through municipalities, counties, and state authorities. Cities have been pushing such innovations as implementation of the requirements of the Convention on the Elimination of Discrimination against Women (CEDAW) notwithstanding the U.S. Government's failure to ratify. Lawyers are pushing human rights claims in state courts. State and local officials attend meetings of human rights mechanisms in Geneva at the UN. The ACLU and others promote Bringing Human Rights Home. I hope that we can capitalize on these initiatives and, over time, see state legislatures enabling individuals to bring human rights claims, as causes of action, in state courts.

2. **We must promote a renewed commitment to the institutions of international human rights law**, especially the Human Rights Council and Human Rights Committee and other treaty bodies. U.S. participation is key, but so is the participation of America human rights lawyers.

3. **We must promote the implementation of human rights law in the standards of corporate work.** The work of John Ruggie and the adoption of his principles, as the UN Guiding Principles on Business and Human Rights, should extend beyond Geneva and into corporate boardrooms across America. General counsel should ensure that the Guiding Principles are implemented as part of their companies' compliance regimes. Terms of service for internet actors should involve adherence to human rights law. And the U.S. Government should promote just this sort of compliance as well.

Thank you very much.

David Kaye
UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

The UN Special Rapporteur provides advice and recommendations to the UN Human Rights Council as related to violations of the right to freedom of opinion and expression, discrimination against, threats, or use of violence, harassment, persecution, or intimidation directed at persons seeking to exercise or to promote the exercise of the right to freedom of opinion and expression, including, as a matter of high priority, against journalists or other professionals in the field of information. The UN Special Rapporteur also provides advice and technical assistance to the Office of the United Nations High Commissioner for Human Rights on how to better promote and protect the right of freedom of opinion and expression.

Online Resources

- UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
- Guiding Principles for Business and Human Rights
- Interpretative Guidance for the Guiding Principles for Business and Human Right by the Office of the High Commissioner for Human Rights

INTERNATIONAL LEGAL DEVELOPMENTS THE YEAR IN REVIEW: 2017

By Jason S. Palmer and Kimberly Y. W. Holst

The ABA Section of International Law's publication, *International Legal Developments—The Year in Review: 2017*, is now available online for Section members. *The Year in Review* presents a survey of important political and legal developments in international law that occurred during 2017. The articles were prepared by knowledgeable members of the Section of International Law who have international expertise in substantive practice areas or geographic regions and submitted through the Section's committees.

This year's publication consists of articles from over forty committees, whose members live around the world and whose committees monitor and report on a diverse range of topics that have arisen in international law over the past year.

As Co-General Editors, we want to extend our gratitude to the many committee chairs, committee editors, and the hundreds of contributing authors. Committee chairs and committee editors solicited the contributing authors for each committee article. The committee editors, who are identified in each article, had the daunting task of keeping their authors' collective contributions within the tightly controlled word limits. They made difficult decisions on what to include and what to cut.

We also want to specially thank the numerous deputy editors, many of whom are law professors who specialize in legal writing and international law, for their technical edits to the submitted articles, as well as **Marc. I. Steinberg, Patricia S. Heard**, and **Beverly Caro Duréus** of SMU Dedman School of Law, the Editor-in-Chief and Co-Executive Editors of *The International Lawyer*, respectively; the student editorial board of *The International Lawyer*; and Section Publications Officer **Nancy Stafford**.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

THE YEAR IN REVIEW

AN ANNUAL SURVEY OF INTERNATIONAL LEGAL DEVELOPMENTS AND PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

2018 • VOLUME 52

INTERNATIONAL LEGAL DEVELOPMENTS YEAR IN REVIEW: 2017

Introduction . . . . Jason Scott Palmer and Kimberly Y. W. Holst

Business Regulation
Customs Law
Export Controls and Economic Sanctions
International Antitrust
International Contracts
International Environmental Law
International M&A and Joint Ventures
International Trade

Disputes
International Arbitration
International Courts & Judicial Affairs
International Family Law
International Litigation

Corporate
International Intellectual Property
International Procurement

Finance
International Financial Products and Services
International Investment and Development
International Securities and Capital Markets

Industries
Aerospace and Defense Industries
International Energy and Natural Resources Law
International Transportation Law

Constituent Division
Women's Interest Network

Tax, Estate, and Individuals
Cross-Border Real Estate
Immigration and Naturalization
International Tax

Public International Law
Anti-Corruption
International Anti-Money Laundering
International Animal Law
International Art and Cultural Heritage
International Human Rights
National Security Law
United Nations and International Organizations

Legal Practice
International Education and Specialist Certification

Regional and Comparative Law
Africa
Canada
China
Eurasia/Russia
European Law
India
Latin America and Caribbean
Mexico
Middle East

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

Finally, we congratulate the 2018 Student Editorial Award recipients, **Caitlin Wilkinson** and **Kara Hargrove**, who were recognized for their exceptional contributions to the editorial process.

We encourage you to browse this useful overview of international law developments that occurred during 2017 and to use it in your legal practice to conduct further in-depth research related to foreign and international law. ◆

Jason S. Palmer and **Kimberly Y. W. Holst** are Co-General Editors of the ABA Section of International Law's publication, *International Legal Developments—The Year in Review: 2017*. **Jason S. Palmer** is a Professor of Law at Stetson University College of Law in St. Petersburg, Florida. **Kimberly Y. W. Holst** is a Clinical Professor of Law at the Sandra Day O'Connor College of Law, Arizona State University.

International Law News
ABA Section of International Law
Your Gateway to International Practice

NEWS

MEET BUDGET OFFICER BILL MOCK

William B.T. Mock, Jr., is a Professor of Law at The John Marshall Law School and is the ABA Section of International Law Budget Officer for 2017–2018.

As the Budget Officer, what are some of your responsibilities?

The job of the Budget Officer, in the broadest sense, is to help the Section be fiscally responsible. More specifically, the Budget Officer works with the incoming Chair and our staff, taking point on crafting the Section's Annual Budget in a way that works within the ABA's overall budget guidelines and technical specifications and in a way that is useful to the Section's various officers. The Budget Officer is also responsible for monitoring expenditures and income throughout the year to keep the Section as financially sound as possible. Ideally, the Annual Budget should be balanced and used as much as possible as a planning tool for Section leaders, rather than merely as a reporting tool.

What are your goals for this year?

The first and most important goal that I had for 2017–2018 was to work with Chair Steven Richman to produce an Annual Budget that was as close to balanced as possible. In recent years, the Section has drawn down its reserves sharply, as have many ABA Sections, Divisions, and Forums. As a consequence, the ABA implemented rules that required SLD officers to create budgets limiting their draw-down to no more than 5 percent of reserves. For the first time in recent memory, the Annual Budget I submitted and the Administration Committee approved came within that limitation. A second goal was to get the Section officers and staff increasingly to use the Annual Budget as a planning tool by consulting the budget when planning programs, publications, membership drives, and the like. That has been moderately successful.

How did you get into international law?

I have been involved with international law since I was in law school, where I was a research assistant for Don Wallace, a former chair of the Section. Immediately after law school, I got a job doing international trade law and international antitrust law in Washington, D.C. Some of the cases I worked on went to the U.S. Supreme Court, including the huge Japanese TV antitrust case of the 1970s and 1980s, *Zenith v. Matsushita*. To this day, my students can find this case in their casebooks.

What is a memorable moment that you enjoyed with the Section?

This is a tough question, as I have been involved with the Section, off and on, for more than 35 years. More particularly, I have been a member of either the Administration Committee or the Executive Committee for seven years, so I have plenty of memories.

One strong memory that embodies much of what the Section stands for occurred a few years ago, during the Section's ILEX trip to Myanmar and Cambodia. When we arrived by bus in Myanmar's capital city, recently build in that country's remote jungle, we found a gleaming city of soaring marble buildings, obviously built at great national expense and designed to impress visitors such as ourselves. Closer inspection, however, revealed these governmental palaces as largely empty. Some of the government staff asked whether they could have some ABA pens because there was no budget for writing implements. Some members of the opposition party informed us that parliamentarians aligned with the ex-military rulers of the country were assigned to lovely, air-conditioned villas, while opposition politicians were assigned to much smaller homes lacking air conditioning. For me, that day of architectural elegance and governmental dysfunctionality embodied why the Section of International Law works so hard to support the Rule of Law around the world. ◆

MEET THE DIVERSITY FELLOWS

OF THE ABA SECTION OF INTERNATIONAL LAW 2018-2020

The ABA Section of International Law Diversity Fellows program gives early career lawyers of diverse backgrounds an opportunity to become involved in the substantive work of the Section. This is in line with the ABA Goal III is to eliminate bias and enhance diversity. Its objectives are to promote full and equal participation in the association, our profession, and the justice system by all persons, and to eliminate bias in the legal profession and the justice system. The Diversity Fellows program runs for two years. Fellows are assigned a mentor from the Section leadership and will work on a project, publication, policy, or program.

Migan Megardichian

Migan Megardichian is a lawyer based in Toronto, Canada. She has been an active member of the Section of International Law since her first year of law school and has held several leadership roles, including Co-Chair of the Section's Young Lawyers' Interest Network (YIN) and a Vice-Chair of the Canada Committee.

During her time as Co-Chair of YIN, the committee received the Best Committee Outreach Award. She also organized two successful programs: Legality and Ethics of Unpaid Internships (Spring Meeting 2014, New York) and International Sports Law (Fall Meeting 2015, Montreal).

She is passionate about international law and hopes to continue her work in the Section with the goal of becoming the Chair of the Section of International Law.

She plans to help advance the diversity initiatives of the ABA through her personal project, which considers diversity of thought and interests and its connection to mental health in the legal profession.

Migan has been called to the Ontario, New York, and District of Columbia bars and is fluent in Armenian and Farsi, with a working knowledge of French and Spanish. ❖

ABA Goal III

To eliminate bias and enhance diversity

Amy Lee Rosen

Amy Lee Rosen is a senior tax correspondent for Law360 where she writes new s and feature stories on federal and international tax. Before that, Amy served as a corporate governance analyst at CQ Roll Call in Washington D.C. where her stories were published on Westlaw. She has been involved with the ABA Section of International Law since 2013, when she attended the Section's Fall Conference in London as she was backpacking around Europe. She is excited to be part of a wonderful organization and is proud to be chosen as a Diversity Fellow.

She is certified to practice law in Pennsylvania and New Jersey and graduated from Temple University Beasley School of Law in Philadelphia. In her spare time, Amy enjoys running, lifting, cooking, eating, and traveling. ❖

Cassandre C. Théano

Cassandre C. Théano is an Associate Legal Officer for Equality and Inclusion at the Open Society Foundations (The Justice Initiative), focusing on citizenship and equality. In that capacity, she leads the litigation and advocacy work related to the restoration of citizenship rights for Dominicans of Haitian descent in the Dominican Republic, Black Mauritanians in Mauritania, and various ethnic minorities in Côte d'Ivoire and Kenya.

Before joining the Open Society Justice Initiative, Cassandre consulted on human rights reports for submission before the United Nations, the Inter-American Commission on Human Rights, and the Human Rights Commission for various non-profit organizations. Previously, she was a litigation associate practicing complex commercial and insurance litigation at Anderson Kill & Olick P.C., exclusively on behalf of policyholders. Prior to joining the firm, she was a Law Clerk to the Honorable Malcolm Graham at the Massachusetts Appeals Court. Cassandre also has worked as a summer associate at two leading corporate law firms, in Paris and in New York.

She holds a law degree from Georgetown University Law Center, with a concentration on International Human Rights Law and a certificate in Refugees and Humanitarian Emergencies. At Georgetown Law, she participated in the International Women's Human Rights Clinic where she successfully advocated for women's land and property rights in Kenya. She was the Senior Articles Editor of the *Georgetown Journal of Gender and the Law*. She earned her undergraduate degree in International Relations and French Literature and her Master's degree in French Society, Politics and Culture from New York University. She is fluent in French, Haitian Creole, and Spanish. ❖

UPCOMING EVENTS

April 14–16
Section Retreat
Princeton, New Jersey

April 17–21
Section 2018 Annual Conference
New York, NY

May 10–11
Investment Arbitration and Trans-Pacific Transactions Conference
Singapore

May 21–22
Challenging the Perception of Risk in Africa
Cape Town, South Africa

June 7–10
ABA Program on the Universal Declaration of Human Rights
Paris, France

June 10–12
Life Sciences Conference
Copenhagen, Denmark

July 20
International Law 101 Bootcamp Program
Miami, Florida

August 2–5
ABA Annual Meeting
Chicago, IL

August 27–September 1
AIJA Annual Congress
Brussels, Belgium

September 27
10th Annual Moscow Conference on the Resolution of International Business Disputes
Moscow, Russia

October 17–19
The New Engine of Growth! Investment and Technology Conference
Seoul, Korea

November 7–9
International Trade and Investment Conference
Mexico City, Mexico

Follow Us!

ABA Section of International Law

@ABAInternatl

ABA Section of International Law

ABA International Conference, Mexico City

November 6-9, 2018 | InterContinental Presidente | Mexico City

ambar.org/silmexico2018

ABA Section of International Law

Your Gateway to International Practice