State Bar of Michigan

Michigan International Lawyer

International Law Section

Volume XVIII, No. 2, Spring 2005

In This Issue

Standard American Business to Consumer Terms and Conditions in the EU – *Bradley Joslove & Andrei V. Krylov* 1

Section Meetings at a Glance 4

New EU Environmental Regulations – *Andrew Doornaert & Stephanie Whitlock* 5

Product Liability Law in Egypt – *Howard L. Stovall* 7

President Bush's Recent Determination on Consular Convention Rights – *Frederic L. Kirgis* . 11

Application of the OECD Anti-Bribery Convention – *Joseph M. West* 15

Section Presentation: International Data Privacy Legislation – *Kelly Dang* 23

Death of Pope Impacts International Law – *Christi Patrick* 25

Michigan Law Students Excel in Jessup International Moot Court Competition – *Christi Patrick* 26

Minutes of Regular Section Meetings November 9, 2004 & January 18, 2005 27

Calendar of Events 30
Leadership Roster 2004-2005 32
Letter from the Chair 35
Treasurer's Report 35

Disclaimer: The opinions expressed here in are solely those of the authors and do not necessarily reflect those of the International Law Section or the Editors.

The *Michigan International Lawyer* is published three times per year by the International Law Section, State Bar of Michigan, 306 Townsend Street, Lansing, Michigan 48933-2083.

Standard American Business to Consumer Terms and Conditions in the EU

By: Bradley Joslove and Andréi V. Krylov, Franklin Law Firm, Paris, France

U.S. companies doing Business to Consumer (B2C) business in the European Union on the basis of their standard U.S. terms and conditions should be aware that many of their provisions may run afoul of EU consumer protection rules. AOL France recently learned this lesson the hard way, when a French court struck down 31 of the clauses in its subscription agreement.

Background

The 1993 E.U. Directive (EEC/93/13) on unfair terms in consumer contracts directed each of the EU Member States to pass legislation protecting consumers against onerous contractual terms in standard form contracts. This Directive has been implemented in all of EU Member States. In France, the Directive was implemented directly into the Consumer Code, which now defines "unfair terms" in contracts between professionals and consumers or non-professionals as "*terms, the purpose or consequence of which is to create a significant imbalance between the rights and obligations of the parties to a contract to the detriment of a non-professional or a consumer*".[1] This definition goes beyond the minimum requirements of the Directive in two important ways. First, whereas the Directive only applies to "consumers", French law also applies to "non-professionals", which term has been defined by case law as professionals concluding a contract for the purchase of goods or services that do not have a "direct relation" to their professional activity. Second, whereas the Directive only applies to standard form contracts, the French rules also apply to individually negotiated contracts.

The French government may, following consultation with the Unfair Terms Commission, specify in a decree the clauses that are to be deemed to be unfair. Even in the absence of such a decree, a French judge may hold that a specific clause is unfair if it meets the definition set forth in the Consumer Code, taking into account, "*at the time of conclusion of the contract, all circumstances related to the conclusion of the contract as well as all other clauses of the contract*".[2] During the court proceedings, the consumer must provide evidence of the unfair nature of the relevant clause. In both events, the clause deemed to be unfair is declared null and void. However, the remainder of the contract will normally continue to apply, if the contract can subsist without the unfair terms.

Furthermore, the Unfair Terms Commission issues recommendations from time to time, in which it advises professionals not to include in their contracts certain clauses that the Commission deems to be unfair. Although these recommendations are not binding on the French courts, they do have an influence and can be seen as a general indication of the direction that the courts would take in the event of litigation over such clauses.

Recent developments in France illustrate how these general principles were applied in practice to internet access provision agreements.

Recommendation of the Unfair Terms Commission

In early 2003, the Unfair Terms Commission published Recommendation No. 03-01 (the "Recommendation"), which sets forth a list of 28 clauses in internet access provision agreements that the Commission deems to be unfair under French law. The Recommendation deals separately with clauses it deems unfair in all internet access provision agreements and those that it deems unfair only when the consumer or non-professional pays the ISP for internet access.

The main clauses deemed to be unfair in all internet access provision agreements are those that:

- derogate from legal rules on jurisdiction;
- state that general terms of service posted on-line prevail over printed general terms of service;
- extend the consumer's liability for unauthorized use of lost or stolen IDs or passwords until the expiration of a certain time period following the notification to the ISP of a loss or theft;
- clauses exonerating the ISP from liability or excessively limiting its liability for violation of the ISP's contractual obligations; and
- clauses making the consumer liable for all the ISP's costs to defend against any third party claims arising from the use of the service, as well as damages that the ISP may be ordered to pay to third party claimants.

The clauses deemed to be unfair in internet access provision agreements requiring payments by consumers or non-professionals to the ISP principally include clauses that:

- entitle the ISP to unilaterally modify the offered service without the consumer's express consent (except where allowed by law);
- entitle the ISP to unilaterally modify the amount of the service fees in fixed-term agreements without the consumer's express consent, even if the consumer may terminate the agreement;
- limit all obligations of the ISP to best effort obligations;
- exonerate the ISP from its obligation to ensure access to the offered service in the event of a breakdown;
- allow the ISP to terminate the agreement in the event of the consumer's breach of "imprecise" obligations (e.g., "abnormal use of service") or the consumer's refusal to pay, even if such refusal is justified;
- make the consumer liable both for liquidated and normal damages in the event of termination of the agreement for breach; and
- provide that notices sent by e-mail are effective after the expiration of an excessively short period of time (e.g., two weeks), even if the consumer did not consult them.

Following the adoption of the Recommendation, most ISPs offering their services in France reviewed their internet access provision agreements in order to determine whether they contained clauses singled out by the Commission. Although they amended some of the "risky" clauses, they decided to keep other clauses in, resulting in a series of lawsuits by French consumer rights associations.

The AOL case

A recently published judgment of the Tribunal of first instance of Nanterre[3] became the first example of a successful challenge to the validity of numerous provisions of the standard subscription agreement of AOL France ("AOL"). Following the publication of the Recommendation, AOL modified its 2000 standard subscription agreement to take into account some of the Unfair Terms Commission's recommendations, but continued to apply the 2000 version to some of its subscribers. The consumer rights association challenged the validity of a total of 36 clauses contained in both the 2000 and 2003 versions of the AOL standard subscription agreement.

The Nanterre court was particularly severe with the AOL terms, declaring a total of 31 clauses to be either unfair or illegal and therefore null and void.

Among the clauses held to be unfair, were the following:

- requirement that the subscriber constantly update his personal data, failing which the agreement is terminated automatically and without prior notice;
- right of AOL to transmit the subscriber's personal data to third parties without his prior consent;
- tacit acceptance of the general terms by the subscriber;

- unilateral right of AOL to modify the agreement, payment terms and the subscriber's user name at AOL's discretion;
- right of AOL to terminate the agreement for convenience;
- requirement that the subscriber pay fees for the remaining term of a definite term agreement in the event of earlier termination by the subscriber without allowing the subscriber to terminate for a legitimate reason without indemnity;
- right of AOL to suspend the subscription or terminate the agreement without prior notice for minor breaches;
- right of AOL to add 15 seconds to each invoiced connection as well as calculation of each minute commenced as due in full;
- exoneration of AOL from all liability for service interruptions and errors and for many other events;
- limitation of AOL's liability to the replacement of a defective CD-Rom;
- statement that the termination of the agreement is the subscriber's sole remedy in the event of AOL's breach;
- presumption of acceptance of notices sent by electronic mail two days after their delivery.

The court further held the following clauses to be illegal:

- unilateral right of AOL to modify the agreement, even though such right was subject to 30 days prior notice and the subscriber's right to terminate the agreement within that period;
- tacit acceptance by the subscriber of changes to the payment terms;
- application of exceptional fees in the event of late payment or termination of the agreement;
- right of AOL to terminate the agreement in the event of risk of non-payment;
- requirement that the consumer contest an invoice within 90 days, failing which the invoice is deemed to be accepted;
- non-exclusive assignment to AOL of rights to all content put on line by the subscriber;
- cap on AOL's liability equal to the last 6 months of fees;
- right of AOL to invoice reasonable attorney's fees in the event of the subscriber's breach.

As a result, the court ordered the deletion of the above-mentioned clauses and ordered that the judgment be published on the homepage of the AOL web site and sent by e-mail to each of AOL's subscribers who were parties to the 2000 and 2003 versions of the AOL standard subscription agreement.

The decision of the court is of an unprecedented severity. Some of its findings go beyond the Recommendation, and others would appear to be unsupported by French law. For example:

- AOL had adopted an "opt-out" system for the use and transfer to third parties of the subscribers' personal data. At the time of the decision, which was issued before the implementation in France of the Data Protection Directive 95/46/EC and the rules on spam of the Electronic Communications Privacy Directive 2002/58/EC, opt-out was legal (opt-in is now required). Nevertheless, the court found that the opt-out system "*is not sufficiently protective for the subscriber*" and therefore unfair.
- By holding that "*AOL has an obligation to achieve the result* [as opposed to a best efforts obligation] *in providing access to the AOL service to all of its subscribers under all circumstances other than those constituting an event of force majeure*", the court went beyond the Recommendation, which only considered to be unfair a clause that limits all obligations of the ISP to best effort obligations.
- The court's prohibition of the termination of an indefinite duration agreement by AOL for convenience with prior notice directly contradicts the rules of the French Civil Code and case law prohibiting perpetual obligations and allowing either party to terminate an agreement concluded for an indefinite term at any time by reasonable prior notice.

AOL appealed this decision to the Court of Appeals of Versailles, which is due to render its judgment later this year. If upheld, this decision should have far-reaching consequences, as the types of clauses struck down by the Nanterre court can be found in the contracts of many ISPs doing business in France. More generally, such clauses can be found in most types of B2C contracts.

As a result, if a U.S. company doing B2C business in the E.U. (di-

rectly or through foreign subsidiaries) wishes to use its U.S. standard terms and conditions, it would be well advised to ask local counsel to review them to ensure that the key clauses will be enforceable.

About the Authors

Bradley L. Joslove

Andréi V. Krylov

Bradley L. Joslove is the partner in charge of the ITI (Information Technology, Telecoms and Internet) Department of the Franklin law firm in Paris, France. Mr. Joslove counsels American, European and Japanese telecommunications, Internet, computer hardware and software and cable companies doing business in France, as well as large French corporations in their transactions with such technology companies. He advises on all aspects of licensing, transactional and intellectual property matters. He is particularly active in the drafting and negotiation of international outsourcing transactions and large-scale IT systems integration and infrastructure deals and also intervenes regularly with respect to data privacy and encryption issues. He is a member of bars of Paris, Massachusetts and the District of Columbia. E-mail: bjoslove@franklin-paris.com.

Andréi V. Krylov is a senior associate of the ITI Department of the Franklin law firm in Paris. Mr. Krylov works on both transactional and regulatory projects in the information technologies, telecommunications and Internet sectors for a French and international clientele. He is specialised in the areas of software licensing and distribution, IT services agreements, e-commerce and data privacy, and is also active in the field of outsourcing agreements and encryption regulations. He is a member of the Paris and New York bars. E-mail: akrylov@franklin-paris.com.

Endnotes

1 Article L. 132-1.
2 Ibid.
3 TGI Nanterre, 2 June 2004.

Section Meetings at-a-Glance

2005

June 14, 2005

Planning Session – Detroit Athletic Club

October 6, 2005

Annual Meeting

November 8, 2005

Meeting – Oakland County

2006

January 24, 2006

Meeting – Detroit

April 18, 2006

Meeting – Law School

June 20, 2006

Planning Session

September, 2006

Annual Meeting

New EU Environmental Regulations

By: Andrew Doornaert and Stephanie Whitlock, Miller, Canfield, Paddock and Stone, PLC, Detroit

Exporters to the European Union (EU) need to be aware of new stricter environmental restrictions impacting electrical products and passenger vehicles sold to customers in the EU. As Free Trade Agreements continue to reduce tariff rates, countries are adopting regulations, standards, and labeling which may become a new barrier of trade.

Electrical products affected include large and small household appliances, IT and telecommunications equipment, lighting equipment, electrical tools, sports equipment, and monitoring and control instruments. Passenger vehicles include all passenger cars with up to nine seats and vans with a gross vehicle weight up to 3.5 metric tons. The EU has set restrictions on the use of certain materials in passenger vehicles to increase reuse, recovery and recycling of vehicles. Because requirements for reuse, recovery and recycling are based on the average weight per vehicle, these requirements will affect all parts of the vehicle.

Prohibited Use of Hazardous Substances

By July 1, 2006, lead, mercury, cadmium, hexavalent chromium, polybrominated biphenyls (PBBs) and polybrominated diphenyl ethers (PDBEs) in electrical and electronic equipment must be replaced by other substances.[1] Certain exceptions are allowed.

The use of lead, cadmium, mercury and chromium IV is impermissible in vehicles put in the market after July 1, 2003.[2] The EU made exceptions for some vehicle parts in June, 2002 which extended deadlines for discontinuing the use of lead, mercury, cadmium and hexavalent chromium.[3] The exceptions also allow certain concentrations of lead, mercury, cadmium and hexavalent chromium in materials where removing these heavy metals would be impossible.

Regulations to Separate Electrical and Electronic Waste

EU Countries are required to minimize the disposal of waste electrical and electronic equipment (WEEE) as unsorted municipal waste and are to set up separate collection systems for WEEE.[4] In the case of electrical and electronic waste, EU Countries agree to ensure that, as of August 13, 2005:

- final holders and distributors can return such waste free of charge;
- distributors of new products ensure that waste of the same type of equipment can be returned to them free of charge on a one-to-one basis;
- producers are allowed to set up and operate individual or collective take-back systems; and
- the return of contaminated waste that presents a risk to the health and safety of personnel may be refused.

Regulations to Collect End of Life Vehicles

EU Countries are required to take necessary measures to ensure that economic operators of passenger vehicles set up systems for the collection of all passenger vehicles at the end of their useful life. These vehicles are referred to as end-of-life vehicles (ELVs). Economic operators include producers, distributors, collectors, motor vehicle insurance companies and other operators which treat ELVs. EU Countries must also implement a system requiring a certificate of destruction for deregistration of vehicles. This process must not have any cost for the last owner of a vehicle.

Producers will have New Responsibilities

Producers must make provisions for the collection of waste which is not from private households. EU Countries must ensure that all waste electrical and electronic equipment is transported to authorized treatment facilities.

The definition of producer includes any person that:

1. manufactures and sells electrical and electronic equipment under his own brand;
2. resells under his own brand equipment produced by other suppliers, a reseller not being regarded as the producer if the brand of the producer appears on the equipment as provided in 1 above.
3. imports or exports electrical and electronic equipment on a professional basis into EU Countries.

Producers of electrical and electronic equipment must apply the best available treatment, recovery and recycling techniques. Producers must also set up systems for the recovery of waste electrical and electronic equipment collected separately.

Rates of Recovery and Reuse for Electrical Products

By December 31, 2005, the rate of recovery by an average weight per appliance must be at least:

- 80% for large domestic appliances and automatic dispensers;
- 70% for small domestic appliances, lighting equipment, electrical and electronic tools, toys, leisure and sports equipment and monitoring and control instruments; and
- 75% for IT and telecommunications equipment and consumer equipment.

By the same date, the rate of component, material and substance reuse and recycling by an average weight per appliance must be at least:

- 80% for discharge lamps
- 75% for large domestic appliances and automatic dispensers
- 50% for small domestic appliances, lighting equipment, electrical and electronic tools, toys, leisure and sports equipment and monitoring and control equipment; and
- 65% in the case of IT and telecommunications equipment and consumer equipment.

Rates of Recovery and Reuse for End-of-life Vehicles

The EU has also set targets to ensure that EU Countries adequately reuse, recover and recycle ELVs. These targets are based on percentages calculated by average weight per vehicle per year and they require that:

- By January 1, 2006 reuse and recovery of ELVs be at a minimum 85% and reuse and recycling be at a minimum 80%;
- By January 1, 2006, reuse and recovery of ELVs produced before January 1, 1980, be at a minimum 75%; and
- By January 1, 2015 reuse and recovery for all ELVs be at 95% and reuse and recycling be at 85%.

Producers of WEEE must Provide for Financing

By August 13, 2005, producers must provide for financing of the collection, treatment, recovery, and environmentally sound disposal of waste electrical and electronic equipment. When a producer places a product on the market, he must furnish a guarantee concerning the financing of the management of his waste. Such a guarantee may take the form of participation by the producer in financing schemes, a recycling insurance or a blocked bank account. In the case of products placed on the market before August 13, 2005 ('historical waste'), financing is to be provided by the producers existing in the market, who are, for instance, to contribute proportionately to their market share.

Economic Operators of ELVs will be Required to Provide Financing

Although a date has not been provided under the new environmental restrictions on ELVs, EU Countries are required to ensure that economic operators pay a significant portion of costs incurred in reusing, recovering and recycling ELVs. It is not yet clear what these costs will be for economic operators.

Conclusion

Companies not prepared for these changes will face difficulties in supplying EU customers. Companies may have to change methods of production and account for additional costs to meet these requirements. For further guidance how the regulations will apply to your products and how to comply, contact Andrew Doornaert of Miller Canfield.

About the Authors

Andrew Doornaert is a licensed attorney and licensed US Customs Broker. Mr. Doornaert's Customs experience includes tariff classification, rates of duty and valuation of imported merchandise, NAFTA, country-of-origin marking and labeling requirements, customs compliance assessments, customs penalty cases, Maquiladoras, value added taxes and other customs considerations that arise in the shipment of goods between the US and foreign markets. He can be reached at (313) 496-8431 or doornaert@millercanfield.com. *For more information on Michigan-based Miller, Canfield, Paddock and Stone, P.L.C., visit* http://www.millercanfield.com.

Stephanie Whitlock is an associate with the Troy office of Miller Canfield in the Environmental and Regulatory Group. She graduated from Wayne State University Law School, 2004 cum laude.

Endnotes

1 13.2.2003 Directive 2002/95/EC of the European Parliament and of the Council on the restriction of the use of certain hazardous substances in electrical and electronic equipment (January 27, 2003) Official Journal of the European Union (L37/19).

2 21.10.2000 Directive 2000/53/EC of the European Parliament and of the Council on end of life vehicles (September 18, 2000) Official Journal of the European Union (L.269/34).

3 29.6.2002 Commission Decision amending Directive 2000/53/EC of the European Parliament and the Council on end of life vehicles (June 27, 2002) Official Journal of the European Union (L.170/81).

4 13.2.2003 Directive 2002/96/EC of the European Parliament and of the Council (January 27, 2003) on waste electrical and electronic equipment (WEEE) Official Journal of the European Union (L37/24.

Product Liability Law in Egypt

By: Howard L. Stovall, John Marshall Law School

Egyptian law governing "product liability" has traditionally been found in general Civil Code principles on contract or tort (wrongful act). More recently, the Egyptian legislature enacted a new Commercial Code, including some significant additional rules on product liability.

The Egyptian legal system adjudicates many so-called product liability lawsuits each year. Based on our experience, however, such lawsuits do not occur with the same relative frequency as found in the U.S. legal system.

Of course, there are fundamental differences between the U.S. and Egyptian legal systems. The Egyptian legal system (including its judicial structure and procedures, as well as its substantive laws) is largely a civil law system, along the lines of European continental civil law systems. Product liability lawsuits brought before the Egyptian courts involve civil law concepts of contractual and tort liability, with the judge determining both questions of law and assessment of fact -- juries are not a feature of the Egyptian judicial system. Similarly, the U.S. legal concept of punitive damages (i.e., awards that exceed a private party's actual damages suffered) does not exist in Egypt, and class action lawsuits are not a prominent feature of the Egyptian judicial system.

Egyptian Civil Code

The Egyptian Civil Code discusses various sources of obligations, the most important of which for present purposes are contract and tort. The applicable Egyptian legal provisions are quite similar to those prevailing in most European civil law jurisdictions. In general, a claim for compensation under the Egyptian Civil Code, unlike the law in some other Arab jurisdictions, must be based on either contractual or tort liability. In other words, a plaintiff may not base its claim against a defendant on a combination of the two types of liability. Where a contract exists, a contractual party seeking compensation for harm suffered generally must proceed under contract principles.

Contractual Liability

In the case of harm suffered by a purchaser of a product, the seller's liability would be based on contract. Under Egyptian law, the seller of a product implicitly warrants that it is free from any defect.

Article 447 of the Egyptian Civil Code contains some general rules as to a seller's liability to a purchaser:

- A seller is liable to a purchaser if, at the time of delivery, the relevant product does not possess those qualities that the seller guaranteed, or if the product has a defect(s) that diminishes its value or usefulness for the purpose intended, as indicated in the contract or from the nature or destined use of that product.
- The seller is liable for harm caused by the defect even if the seller was unaware of such defect.
- However, the seller is not liable for any defect of which the purchaser was aware at the time of the sale, or for any defect that the purchaser could have discovered by examining the product with the care of a reasonable person. As an exception to this general rule, a seller would be liable to the purchaser if the seller had assured the purchaser that the product was free of any defect, or if the seller fraudulently concealed such defect.

Despite such generally applicable rules on seller liability, the Egyptian Civil Code allows contractual parties relatively broad freedom to negotiate their respective obligations and liabilities, through specific contractual provisions on warranty, indemnification and waiver. For example, Article 453 of the Egyptian Civil Code states that the parties to a contract may agree to increase, decrease or eliminate the seller's warranty, again provided that the seller has not fraudulently concealed defects from the purchaser. Along these same lines, general contract rules in the Egyptian Civil Code allow parties to agree that the obligor be discharged from all liability for its failure to perform contractual obligations, with the exception of liability arising from the obligor's fraud or gross negligence (gross error).

Tort Liability

Absent a contractual relationship between a manufacturer and the purchaser of a defective product, the manufacturer's liability to the purchaser would be based on tort, *i.e.,* liability for damages and injuries arising out of non-contractual obligations.

According to Article 163 of the Egyptian Civil Code, a person committing any fault (or error), causing

harm to another, is obliged to compensate for the damages suffered. Thus, three elements must be present for tort liability to arise: (i) a fault or error (which may be either an act or a failure to act); (ii) damage to another; and (iii) a casual connection between the fault and damage.

The Egyptian Civil Code does not permit parties to disclaim liability for tortious acts, unlike the case with contractual liability. Article 217(3) of the Egyptian Civil Code provides that "any clause discharging a person from responsibility for wrongful acts [torts] is void". Nonetheless, Egyptian tort principles favorable to a defendant – such as contributory fault, intervening cause, and necessity – may help to reduce the number of product liability lawsuits that are actually initiated in Egypt.

Damages

Article 221 of the Egyptian Civil Code contains some general principles for quantifying damages resulting from breach of an obligation, whether arising under contract or tort. (The Civil Code often refers to the party breaching its obligation as the 'debtor', and the party suffering harm from that breach as the 'creditor'.)

- The judge will determine the amount of damages, if it has not been established within the parties' contract (e.g., a liquidated damages clause) or by law.
- The amount of damages shall include losses suffered by the creditor as well as lost profits, provided such are the normal result of the debtor's failure to perform its obligation (or its delay in performing). For these purposes, such losses shall be considered to be a 'normal result' if the creditor is not able to avoid those losses despite making reasonable efforts.
- If the relevant obligation arises from contract (rather than tort) principles, then a debtor will not be liable for damages greater than what could have been normally foreseen at the time of entering into the contract – although this limitation does not apply if the debtor committed fraud or gross negligence.

Egyptian Civil Code liability provisions do not explicitly use the term "consequential" damages. In Egypt, a person generally is not liable for indirect damages. A person may be liable for direct damages, including both "material damage" and "moral damage" . Contractual liability includes those damages which are both direct and foreseeable, i.e., the "natural result" of a contractual breach. Tort liability includes all direct damages, i.e., whether foreseeable or unforeseeable. Egyptian jurists have summarized these rules in the following examples:

- *Direct/Indirect*. If a lessor fails to fulfill the provisions of a lease and the lessee is forced to move its business to other premises, the cost of the move (including increased rent at the new premises) would be direct damages arising from the contractual breach. However, if the new premises contain certain harmful bacteria which cause the lessee's employees to become ill, this harm would be indirect damages for which the lessor would not be liable under either contract or tort principles.
- *Foreseeability*. A bus company can foresee that a passenger will carry luggage containing articles of more or less considerable value (as opposed to items of quite exceptional value). Consequently, if the bus company misplaces a passenger's luggage, it will be liable for such damages. Compare the situation where a passenger is traveling to a destination in order to participate in a special event, such as a jockey at a horse race, a student at an important university exam, or a businessman at an important contract negotiation. If the bus arrived late at the destination, the passenger normally cannot recover the damages suffered by not participating in the event, unless circumstances indicate that the bus company foresaw the special risk which it was assuming.
- *Loss/Profit*. If a singer breaks his/her contract with a theater owner, the latter can claim expenses incurred in preparing for the performance, advertising, set designs and the like, as well as for the loss of profits which the theater owner would have derived from the concert. In addition to these material damages, a court may consider whether the theater owner also suffered moral damages (e.g., loss of reputation with the public) due to the singer's breach of contract.
- *Mitigation*. If a farmer hires a moving company to transport a broken piece of equipment to be repaired, but the equipment is lost by the moving company, the farmer cannot wait for months to pass and then claim losses for being without the equipment for an entire season. Rather, when the farmer learns that the equipment is lost, he should use his best efforts to obtain replacement equipment.

The Egyptian Civil Code also contains some other rules on damages that apply specially to either contractual liability or tortious liability, but not both. For example, contractual parties may agree in advance as to "liquidated

damages" owed in the event of contractual breach. Articles 224 and 225 of the Egyptian Civil Code contain three important general principles:

- The liquidated amount is not owed if the debtor proves that the creditor did not suffer any damage;
- The liquidated amount may be reduced if the debtor proves that the parties' estimation was excessive, or if the debtor has partly performed the contractual obligation; and
- The creditor is not entitled to claim more than the liquidated damages, even if harmed in excess of the liquidated amount, unless the debtor has committed fraud or gross error.

Wrongful Death

Unlike some other Arab civil codes (such as in Kuwait and the United Arab Emirates), the Egyptian Civil Code does not contain special statutory rules applicable solely to damages from wrongful death. By way of contrast, for example, the UAE Civil Code reflects principles of Islamic law (Shari'ah) on this issue: a person committing a harmful act causing death is obliged to pay diyya (sometimes translated as "blood money"). Article 299 of the UAE Civil Code is drafted to reflect these Islamic law principles.

In light of various (sometimes divergent) rules as to the amount of diyya paid under traditional Islamic law, the UAE Federal government has fixed the amount of diyya by statute. The currently applicable law is UAE Federal Law No. 17 (1991) as amended, entitled "Setting the Amount of Legal Diyya to be Paid to Victims of Wrongful Death." Article 1 of Law No. 17 (as amended in 2003) fixes diyya at UAE Dirhams (Dhs.) 200,000 (or approximately U.S.$54,000, as UAE Dhs. 3.67 approximately equals US$1.00) – applicable in all courts in the UAE, and paid to the victim of a wrongful death.

Egyptian Commercial Code

The new Egyptian Commercial Code was enacted in 1999, replacing a law that had been in effect since 1883. The Commercial Code received much publicity for introducing new rules on technology transfer, protections to local commercial agencies, and for re-tooling applicable regulations on various banking matters (most notably, checks). However, less attention was given to Article 67 of the Commercial Code, a six-paragraph provision containing some new product liability rules.

The first paragraph of Article 67 reflects the general rule that both the producer **and** the distributor of a product will be liable to anyone suffering harm caused by the product, if the harmed person proves such harm resulted from a defect in the product.

The second paragraph of Article 67 specifies when a product will be deemed 'defective': if sufficient precautions were not taken in product design, manufacture, assembly, processing for consumption, storage, packaging, method of display or use, so as to prevent the occurrence of harm or to warn against the possibility of such harm.

The third paragraph of Article 67 defines what is meant by the expressions 'producer' and 'distributor' for these purposes. A producer is the manufacturer of a product prepared in its final form for introduction into the stream of commerce -- even if some of the components used in assembly were manufactured by others. A distributor includes not only the commercial importer, but also the wholesale merchant distributing products in the Egyptian market through retailers. A retail merchant may also be deemed a distributor for this purpose, if that merchant was aware (or was under some duty to be aware) of the defect in the product.

According to the fourth paragraph of Article 67, a claimant may bring a lawsuit against the producer or the distributor or both, without limiting the liability of either (what a U.S. lawyer might call "joint and several liability"). Moreover, if the business center of the producer or distributor is outside Egypt, a claimant may bring suit before the Egyptian court within the circuit in which lies a branch, factory, agency, or office of the defendant(s).

Under paragraph five of Article 67, a lawsuit will be time barred (or prescribed) after the lapse of three years from the date the harmed person learns of the harm and the person responsible therefor. In all cases, this right to sue lapses after fifteen years from the day the wrongful act took place. (However, such Commercial Code time bars should be carefully considered and compared to other statutory limitation periods found in Egyptian law. For example, in the case of sales contracts under Article 452 of the Egyptian Civil Code, a purchaser's action on a warranty is time barred after one year from the delivery date of the product sold, even if the purchaser only later discovers the defect, unless the purchaser agrees to be bound to a longer period of warranty. (The seller cannot avail itself of this one year limitation period if the purchaser proves that the seller fraudulently concealed the defect.)

Finally, the sixth paragraph of Article 67 considers null and void any contractual condition, provision or the like that seeks to excuse the producer or distributor from liability, or to shorten the above-mentioned time bar (statute of limitations).

Some Practical Considerations

In general, the Egyptian court system is notoriously inefficient, which probably dissuades many potential Egyptian claimants from initiating product liability lawsuits, and increases the likelihood of negotiated settlements. Moreover, in our experience, potential Egyptian claimants are generally less likely to sue foreign manufacturers, given the substantial legal costs that may arise when seeking to enforce an Egyptian court judgement overseas.

Finally, and at the risk of overstatement, our impression is that damage awards in Egyptian product liability lawsuits are generally much smaller than in U.S. product liability lawsuits. We have mentioned some of the possible reasons for this -- no punitive damage awards to private litigants in Egypt, and no jury trials. Rather, the amount of compensation is determined by the Egyptian courts (and experts employed within the judicial system). As a practical matter, we believe that the value of damaged property, lost wages/earning capacity, and medical/hospital costs in most Egyptian product liability lawsuits would be a fraction of the value in comparable lawsuits within the U.S. legal system -- reflecting the different economic conditions that currently exist in these two countries.

Egyptian Commerical Code

Article 67*

1. The producer and the distributor of a product shall be liable towards anyone who suffers any bodily or material harm caused by a product, if the harmed person proves such harm resulted from a defect in the product.
2. Specifically, the product shall be deemed defective if sufficient precautions were not taken in its design, manufacture, assembly, processing for consumption, storage, packaging, method of display or use, to prevent the occurrence of harm or to warn against the possibility of such harm.
3. In applying this Article:
   (a) the expression "producer" shall mean the manufacturer of the product who prepared it in the final form in which it was offered into commerce, whether all the parts used in assembly of the product were manufactured by the producer or another party. The expression "producer" shall not apply to a subordinate of the producer.
   (b) the expression "distributor" shall mean the importer of the product for trade, and the wholesale merchant who undertakes its distribution in the local market through retailers even if, at the same time, the wholesaler itself undertakes retail sales. The expression shall also include the retail merchant if it was aware, or if it was obliged to be aware, when selling the product of the defect in it. The standard for such determination is what an ordinary merchant selling the same kind of product would do in similar circumstances.
4. The claimant may bring a lawsuit against the producer or the distributor or both of them together, without joint liability between the latter two. If the business center of the producer or distributor is outside Egypt, trial is permitted before the Egyptian court within the circuit in which lies a branch, factory, agency, or office of [the defendant].
5. The lawsuit shall be prescribed after the lapse of three years from the date the harmed person learns of the harm and the person responsible therefor. This [right to sue] shall lapse after fifteen years from the day the wrongful act took place.
6. All conditions or statements intended to excuse the producer or distributor from liability, or limit or reduce the period for prescription, shall be null and void.

About the Author:

Howard Stovall

For over twenty-three years, Mr. Stovall has assisted clients on commercial law matters throughout the Arabic-speaking countries of the Middle East. He has served as an Arab law expert in judicial and arbitral proceedings in the United States and Europe, and recently taught "Comparative Commercial Law of the Arab Middle East" as an adjunct professor at John Marshall Law School in Chicago. This article is intended to summarize some general legal principles of product liability in Egypt, but not to provide legal advice on any specific question of Egyptian law.

Endnote

* This is the unofficial translation of the Egyptian Commercial Code, prepared Howard L. Stovall, from its Arabic text.

President Bush's Recent Determination on Consular Convention Rights

By: Frederic L. Kirgis, Washington and Lee University School of Law

Background

The Vienna Convention on Consular Relations, a multilateral treaty to which the United States, Mexico and 164 other states (countries) are parties, requires the competent authorities of each party to inform the consulate of the other party if the latter party's national is arrested and requests that the consulate be notified. The convention also requires the authorities to forward any communication the arrested person addresses to the consulate, and to inform the person concerned without delay of his or her right to communicate with the consulate. The consular authorities have the right to visit and correspond with that person and to arrange for his or her legal representation.[1]

Until the last few years, authorities in the United States frequently did not comply with these requirements, which apparently were little known in law enforcement circles or even among court-appointed defense lawyers. In scores of homicide cases, nationals of states parties to the Convention were sentenced to death even though they had not been given timely notification of their right to communicate with their consulates. In the typical case, the court-appointed defense lawyer failed to raise the issue at the trial, and belatedly did so only on appeal or in a habeas corpus petition after conviction and sentencing. The courts denied relief, either on the ground that procedurally it was too late to raise the matter (the "procedural default rule"), or that the Consular Convention establishes rights only for the states parties to it and not for individuals who seek to enforce the convention in U.S. courts.

In separate proceedings brought over the last few years, Paraguay, Germany and Mexico have challenged these U.S. practices in the International Court of Justice (ICJ). In the first case, the ICJ in preliminary proceedings called on the United States government to take all measures at its disposal to ensure that the Paraguayan national, Angel Francisco Breard, would not be executed pending a final decision by the ICJ.[2] The U.S. Secretary of State requested the Governor of Virginia to suspend Breard's impending execution, and Breard sought immediate relief in U.S. courts. The U.S. Supreme Court denied his petitions for habeas corpus and for certioriari, relying on the procedural default rule.[3] The Governor of Virginia rejected the Secretary of State's request. Breard was executed before the ICJ could decide the merits of the proceedings brought by Paraguay.[4]

The ICJ decided the other two cases (the LaGrand case and the Avena case) on the merits, holding in each case that the United States had violated the Consular Convention and was therefore obligated, "by means of its own choosing," to allow the review and reconsideration of the convictions and sentences by taking account of the rights set forth in that convention.[5] According to the ICJ, use of the procedural default rule to preclude review and reconsideration in these cases would violate the Consular Convention.[6]

The U.S. Position

Until very recently, the United States government's response to the violations of the Consular Convention and to the ICJ decisions has been simply to apologize to the governments whose nationals were convicted, and to issue instructions to law enforcement officials in the United States on the requirements of the convention. But on February 28, 2005, President George W. Bush made the following determination:

> I have determined, pursuant to the authority vested in me as President by the Constitution and laws of the United States, that the United States will discharge its international obligations under the decision of the International Court of Justice in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America), 2004 I.C.J. 128 (Mar. 31), by having state courts give effect to the decision in accordance with general principles of comity in cases filed by the 51 Mexican nationals addressed in that decision.[7]

There are several noteworthy aspects of the President's determination. First, he acknowledged that the United States is under an international obligation to comply with the ICJ decision in the Avena case. This would not be remarkable (since the United States and all other United Nations members have agreed in the ICJ Statute that a decision of the Court is final and binding on the parties to the case[8]), were it not for the disinclination of the U.S. government in some previous cases to concede that it is bound to give full

effect to the ICJ's orders in judgments adverse to the United States.[9] Although the President's determination expressly applies only to the Avena case, there is no distinction in principle between the effect of that judgment on the U.S. as a matter of international law and the effect of any future ICJ judgment that goes against the United States on the merits. Whether any given ICJ judgment has immediate effect in U.S. domestic law is another question, discussed below.

Another noteworthy point is the President's reliance on his constitutional and statutory authority to make a determination as to how state courts should treat the ICJ decision. Contrary to what was said in at least one news report on the President's determination,[10] he does not, strictly speaking, have broad constitutional authority to "order" state courts to grant review of cases they have already decided. But his constitutional authority clearly does allow him to make decisions regarding U.S. foreign policy, including decisions in the capacity of head diplomat. The decision to give effect to the ICJ judgment in the Avena case would fall within that category, since it clearly would smooth out U.S. relations with Mexico and would enhance U.S. standing as an international law-abiding nation. Any state action that conflicts with the express foreign policy of the federal government is pre-empted under a consistent line of Supreme Court decisions.[11] Decisions of state courts in the United States amount to state action.[12] Thus the state courts with jurisdiction over the cases involving the 51 Mexican nationals could not, under Supreme Court precedent, decline to give effect to the President's determination.

Implicit in the President's determination is the proposition that the state courts in these cases should not adhere to the procedural default rule. The Solicitor General's amicus brief in a pending Supreme Court case involving one of the 51 Mexican nationals makes the same point explicitly.[13] Consequently, even though the attorneys for the Mexican nationals may not have raised the point during the trials, the failure to comply with the Consular Convention may now be put forward. But neither the President's determination nor the ICJ judgment in the Avena case requires the courts to quash the convictions or the sentences simply because of the failure to comply with the convention. All that is required is reconsideration in light of the rights set forth in the convention.

The President's determination would seem to preclude the state courts from denying relief on ground that the convention simply gives consular rights to governments and not to individuals, although this point is not crystal clear. The Supreme Court in *Breard v. Greene* said that the convention "arguably" confers on an individual the right to consular assistance following arrest, but it did not finally decide the point and the President had made no determination in that case that the state court should give effect to the ICJ's preliminary order.[14]

More importantly, the Supreme Court in the *Breard* case said that even if the Consular Convention claim had been properly raised and proved, "it is extremely doubtful that the violation should result in the overturning of a final judgment of conviction without some showing that the violation had an effect on the trial."[15] The sentence just quoted, however, refers only to conviction and not to sentencing.

Finally, the President's determination said that state courts should give effect to the ICJ decision "in accordance with general principles of comity." "Comity" denotes a willingness to act in accordance with good will and respect, but it does not denote a legal obligation to do what is contemplated. Exactly what the President meant in the current context is not apparent, since – as mentioned above – he expressly acknowledged an international obligation under the ICJ decision in the *Avena* case, which called for review and reconsideration of the convictions and sentences of the 51 Mexican nationals. Perhaps he meant simply that state courts, in revisiting their decisions in these cases, should do more than go through the motions and should instead give real respect to the ICJ judgment. Perhaps he meant that state courts are not legally required to give any ICJ judgment immediate effect in U.S. domestic law in the absence of a determination by the President. If the latter, and if it is intended as a general statement extending beyond the facts of the present case, there would be a separation-of-powers question whether the President's foreign affairs authority under the Constitution extends to determining the direct legal effect of ICJ judgments on domestic judicial proceedings in the United States.

At this writing, it is unclear what effect the President's determination will have on the currently-pending Supreme Court case, mentioned above, involving one of the 51 Mexican nationals.[16] The Court granted certiorari in that case before the President made his determination. The questions the Court said it would address did not foresee any such determination.

Conclusion

In any event, the President's determination is a statement of respect for international law and adjudication. It enhances the stature of the ICJ. Yet it remains to be seen whether this will defuse assertions by foreign govern-

ments that the United States has little to complain about if Americans who are arrested abroad are not notified of their right to communicate with the American consulate. Presumably it would have that effect if the state courts give serious reconsideration to these cases, and if similar reconsideration is given to other cases in which officials in the United States have not complied with the Consular Convention.

Addendum

On March 7, 2005, U.S. Secretary of State Condoleezza Rice sent a letter to the United Nations Secretary-General, in which she said:

> This letter constitutes notification by the United States of America that it hereby withdraws from the [Consular Convention's Optional Protocol Concerning the Compulsory Settlement of Disputes]. As a consequence of this withdrawal, the United States will no longer recognize the jurisdiction of the International Court of Justice reflected in that Protocol.

The Optional Protocol supplied the basis for the ICJ's jurisdiction in the three proceedings against the United States mentioned above. If the United States is no longer bound by the Optional Protocol, there would be no basis for compulsory ICJ jurisdiction over the United States in similar proceedings.

The Optional Protocol is silent regarding any right to withdraw from it or any procedure to be followed if a party tries to withdraw. It has the status of a treaty. Consequently, one would look to the Vienna Convention on the Law of Treaties (which is itself a treaty) for the relevant international law rules. The substantive provisions of the Vienna Convention on the Law of Treaties are generally recognized as authoritative codifications of customary international law, even for nation-states (like the United States) that are not parties to that Convention. Article 56 of the Vienna Convention on the Law of Treaties says:

> 1. A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless:
>
> (a) it is established that the parties intended to admit the possibility of denunciation or withdrawal; or
>
> (b) a right of denunciation or withdrawal may be implied by the nature of the treaty.
>
> 2. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1.

The U.S. government presumably would argue that, even if it cannot be shown that the parties intended to admit the possibility of withdrawal from the Optional Protocol to the Consular Convention, the nature of any such optional protocol permits withdrawal under section 1(b) above. If so, there is a question whether the withdrawal can be effective until twelve months from its date, under section 2 above. But since section 2 is a procedural provision establishing a specific time limit, and since rules of customary international law are not specific regarding such things as time periods, the time period in section 2 does not apply literally to a country like the United States that is not a party to the Vienna Convention on the Law of Treaties. Nevertheless, section 2 reflects a customary international law principle of reasonable notice before a party withdraws from a treaty. In the words of the ICJ in a case not involving the Consular Convention, the law of treaties "requires a reasonable time for withdrawal from or termination of treaties that contain no provision regarding the duration of their validity."[17] In that case it was held that the United States could not lawfully withdraw its consent to ICJ "compulsory" jurisdiction on three days' notice.[18] How much time is reasonable for withdrawal from the Optional Protocol is debatable, but section 2, above, suggests that it might be somewhere around twelve months.

A separate question may arise under the domestic law of the United States. Since the Consular Convention and its Optional Protocol were entered into with the advice and consent of the U.S. Senate, it could be argued that the Senate must consent to any withdrawal. The U.S. Supreme Court has never decided whether a President must get the Senate's consent before he terminates a treaty. The closest it has come was when President Carter terminated the mutual defense treaty with Taiwan. Several Senators and members of the House of Representatives challenged him in court. The case reached the Supreme Court, but it directed the lower court to dismiss the complaint on procedural grounds only.[19] This left President Carter's action intact. The controversy over his power to terminate the treaty died away, suggesting that Congress may have ultimately acquiesced in his action.[20]

About the Author:

Frederic L. Kirgis is Law Alumni Professor of Law at Washington and Lee University School of Law. He has written books and articles on international law, and is an honorary editor of the American Journal of International Law.

This article and addendum were reprinted with the permission of ASIL and the author. The American Society of International Law originally published them online in *ASIL Insights* in March 2005. The purpose of *ASIL Insights* is to provide concise and informed background for developments of interest to the international community. The American Society of International Law does not take positions on substantive issues, including the ones discussed in this Insight. For more information, resources, and reliable versions of international law documents on the web, consult EISIL, the Electronic Information System for International Law at *www.eisil.org*. ASIL Insights are available on the ASIL website at *http://www.asil.org/insights.htm*. Interested individuals may sign up to receive International Law In Brief via email: *http://www.asil.org/resources/enewsletters.html#lawinbrief* or join the ASILforum listserve for open discussions on topics of international law by going to *http://www.asil.org/forum.htm.*

Endnotes

1 Vienna Convention on Consular Relations, Apr. 24, 1963, art. 36(1), 21 U.S.Treaties 77, 596 U.N. Treaty Series 261.

2 Case Concerning the Vienna Convention on Consular Relations (*Paraguay v. United States*), 1998 ICJ Rep. 248, 37 International Legal Materials (ILM) 810 (1998). See ASIL Insight, International Court of Justice Orders United States to Stay Execution of Paraguayan National in Virginia (April 1998).

3 *Breard v. Greene*, 523 US 371, 118 S.Ct. 1352 (1998).

4 *See Agora: Breard*, 92 AJIL 666 (1998).

5 LaGrand Case (*Germany v. United States*), 2001 ICJ Rep. 466, 40 ILM 1069 (2001); Case Concerning Avena and Other Mexican Nationals, 2004 ICJ Rep. 128, 43 ILM 581 (2004). See *ASIL Insights*, World Court Rules Against the United States in LaGrand Case Arising from a Violation of the Vienna Convention on Consular Relations (July 2001), and Consular Notification and the Death Penalty: The ICJ's Judgment in Avena (April 2004).

6 LaGrand case, ¶ 90; Avena case, ¶ 113.

7 Quoted in Brief for the United States as Amicus Curiae Supporting Respondent in *Medellin v. Dretke*, U.S. Supreme Court Docket no. 04-5928. The brief is available at <*http://www.usdoj.gov/osg/briefs/2004/3mer/1ami/2004-5928.mer.ami.html*>.

8 ICJ Statute arts. 59 & 60. The ICJ Statute is annexed to the U.N. Charter and is a treaty obligation of all U.N. member states.

9 In the Military and Paramilitary Activities case (*Nicaragua v. United States*), 1986 ICJ Rep. 14, 25 ILM 1023 (1986), the United States did not participate in the proceedings on the merits after the Court had rejected the U.S. objections to its jurisdiction, and did not concede that it was bound by the Court's final judgment.

10 "Convicted Mexicans Allowed Case Reviews," *International Herald Tribune*, Friday, March 4, 2005.

11 *See American Insurance Ass'n v. Garamendi*, 539 US 396, 123 S.Ct. 2374 (2003); Crosby v. National Foreign Trade Council, 530 US 363, 120 S.Ct. 2288 (2000); *Zschernig v. Miller*, 389 US 429, 88 S.Ct. 664 (1968); *United States v. Pink*, 315 US 203, 62 S.Ct. 552 (1942); *United States v. Belmont*, 301 US 324, 57 S.Ct. 758 (1937).

12 *See Shelley v. Kraemer*, 334 US 1, 68 S.Ct. 836 (1948).

13 Brief for the United States as Amicus Curiae, supra note 7.

14 *Breard v. Greene*, 523 US 371, 376 (1998).

15 *Id*. at 377.

16 *Medellin v. Dretke*, U.S. Supreme Court Docket no. 04-5928. The federal Court of Appeals in this case held (before the President's determination) that the procedural default rule precluded reconsideration and that the Consular Convention does not give individuals a right to enforce it in U.S. courts. *Medellin v. Dretke*, 371 F.3d 270 (5th Cir. 2004).

17 Case Concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States*), para. 63, 1984 ICJ Rep. 392, 24 International Legal Materials 59 (1985) (Jurisdiction of the Court and Admissibility of the Application).

18 The Court's "compulsory" jurisdiction emanates from ICJ Statute article 36(2), which says that states parties to the Statute may at any time declare that they recognize the Court's jurisdiction as compulsory in certain types of legal disputes.

19 The case is *Goldwater v. Carter*, 444 U.S. 996 (1979). Four Justices regarded the matter as a nonjusticiable political question, and one Justice regarded the case as not yet ripe for judicial review. Justice Brennan, in dissent, would have upheld the President's power.

20 On treaty termination under U.S. law, see Louis Henken, Foreign Affairs and the United States Constitution 211-214 (2d ed. 1996).

2004 – 2005 Scholarship Essay:

Application of the OECD Anti-Bribery Convention

By: Joseph M. West, Wayne State University School of Law, 3L

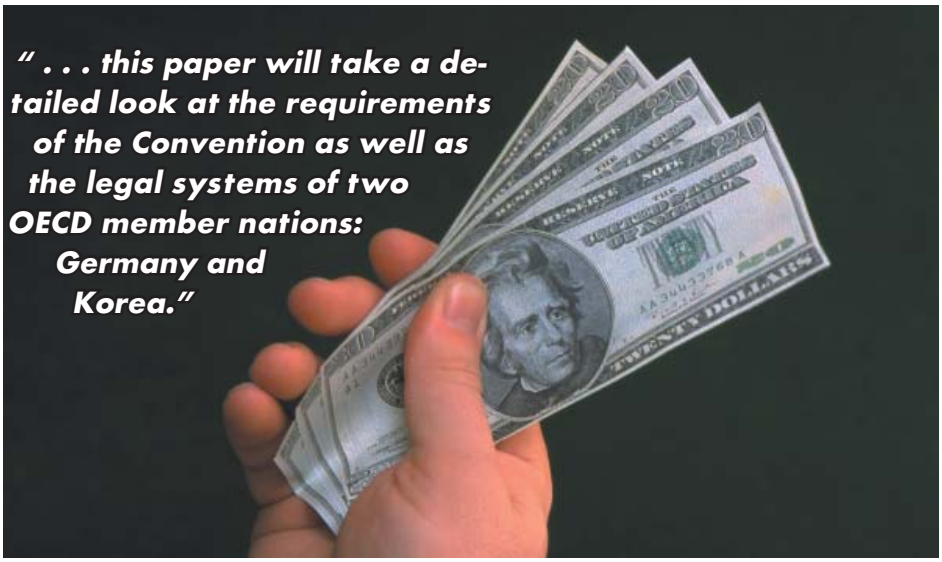
The Organization for Economic Co-operation and Development ("OECD") is an organization of thirty member nations that promote democracy and market economics.[1] One of the many areas in which OECD has some involvement is the negotiation and drafting of international agreements in particular areas of need.[2]

In 1989, the OECD identified international corruption as an area of concern.[3] The next eight years were a period of extensive analysis and negotiation, culminating in the execution of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997 ("Convention").[4] The Convention entered into force on February 15, 1999.[5] As of early 2005, all OECD member states and six non-member states are signatories to the Convention.[6]

The Convention requires signatories to pass implementing legislation within their own legal system.[7] According to OECD, every state that signed the Convention before late 2004 has passed the necessary implementing legislation.[8] It would seem, then, that the goals of the Convention have been realized. But have they?

In order to explore the effectiveness of the Convention, this paper will take a detailed look at the requirements of the Convention as well as the legal systems of two OECD member nations: Germany and Korea. These countries were chosen with two considerations in mind: the likelihood that the clients of Michigan lawyers would do business there (focusing primarily on the automobile industry) and the fact that both phases of peer review called for under the Convention have been completed with respect to the particular signatory.

The goal is to explore whether Germany and Korea have enacted legislation contemplated by the Convention and note any important deviations. There are two primary sources of information for this analysis. The first is the actual implementing legislation passed by Germany and Korea.[9] The second is a series of reports compiled and published by OECD. The Convention requires extensive monitoring and peer review, consisting primarily of a Phase 1 and a Phase 2 review process.[10] This review involved extensive questionnaires to government officials, as well as on-site visits and interviews.[11] The reports generated in this peer review process are cited throughout and contain both facts and commentary on the efforts of the parties to implement and enforce the Convention.



While the Convention calls for many changes to be put into effect, the focus of this article will be on a narrow selection of topics. This focus is intended to give Michigan lawyers a brief look at the bribery of a foreign public official offense and its defenses in Germany and Korea as well as the nuts and bolts required to prosecute such an offense (*i.e.*, corporate liability, jurisdiction, and the applicable statute of limitations). In some instances, additional areas of deviation are noted. For lawyers that intend to advise clients on the Convention, this article is not intended as an exhaustive or authoritative interpretation of German and Korean laws.

After discussing the implementation of the Convention, the paper will discuss whether the Convention implementing legislation has been put to any use. That is, whether there are any ongoing investigations or successful prosecutions that have resulted.

Implementation of the Convention

This section of the paper will compare the requirements of the Convention to the implementing legislation passed in Germany and Ko-

rea. This small-scale comparison will illustrate the difficulties in achieving a uniform result with an international agreement.

Convention Requirements

Defining the substantive offense of bribery of a foreign public official and its defenses. The Convention opens with the requirement that the signatories must establish a criminal offense of bribery of a foreign public official. Article 1 defines the new offense in a lengthy definition that can be broken down into ten elements:

> [I]t is a criminal offence . . . for [1] any person [2] intentionally to [3] offer, promise or give [4] any undue pecuniary or other advantage [5] whether directly or through intermediaries [6] to a foreign public official [7] for that official or for a third party [8] in order that the official act or refrain from acting in relation to the performance of official duties [9] in order to obtain or retain business or other improper advantage [10] in the conduct of international business.[12]

Article 1 went on to provide definitions for two elements. The sixth-element term "foreign public official" was defined in a broad manner:

> "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected; any person exercising a public function for a foreign country, including for a public agency or public enterprise; and any official or agent of a public international organization.[13]

The term "foreign country" in that definition was further defined as "includ[ing] all levels and subdivisions of government, from national to local."[14] The Convention then stated that the eighth element, an "act or refrain from acting in relation to the performance of official duties," "includes any use of the public official's position, whether or not within the official's authorized competence."[15]

The terms of the Convention do not discuss defenses, but the commentary provides some guidance.[16] For example, it is no defense that: the business involved could have or would have been awarded the business;[17] the advantage gained was small; local custom or authorities tolerated the bribes; or that bribes were required to obtain the business.[18] There is one potential defense mentioned in the commentary for "small 'facilitation' payments."[19] Although the term is not defined, the commentary states that these payments "are made to induce public officials to perform their functions, such as issuing licenses or permits."[20] The drafters concluded that such payments failed to meet the ninth element of the bribery offense, "to obtain or retain business or other improper advantage."[21]

Corporate liability. Article 2 requires that the parties provide for liability of legal persons for the new bribery offense to the extent provided in other areas of the law.[22] The commentary confirms that such liability includes criminal responsibility.[23]

Jurisdiction. The Convention contemplates two potential types of jurisdiction over the bribery offense: territorial and nationality. Article 4 requires that the parties establish jurisdiction to prosecute a bribery offense where "committed in whole or in part in its territory."[24] The commentary indicates that this "territorial basis for jurisdiction should be interpreted broadly so that an extensive physical connection to the bribery act is not required."[25] Where parties allow for jurisdiction based solely on the nationality of the offender, regardless of where the offense occurred, Article 4 requires coextensive nationality jurisdiction for bribery of a foreign public official.[26]

Statute of limitations. The Convention does not require a particular duration for the applicable statute of limitations, but one that "allow[s] an adequate period of time for the investigation and prosecution of this offense."

With these Convention requirements in mind, it is now possible to examine the legal systems of Germany and Korea to determine whether their efforts at implementing the convention requirements have been successful.

German Implementing Legislation

In order to implement the Convention, Germany adopted the "Act on Combating Bribery of Foreign Public Officials in International Business Transactions."[27] This legislation was referred to in the OECD reports as the "Act on Combating International Bribery" or "ACIB."[28] The ACIB implemented the Convention in two ways. First, the ACIB amended Germany's domestic bribery statute in order to require similar treatment of bribery of domestic and foreign public officials.[29] Second, because members of parliament are not considered public officials in the German legal system, the ACIB enacted a new provision regarding bribery of foreign parliament members.[30]

Defining the substantive offense of bribery of a foreign public official and its defenses. The German implementing legislation seems to define the bribery offense narrower than the Convention. The Convention definition plainly includes acts outside of the official's au-

thorized competence.[31] However, the amended bribery offense only pertains to "bribery concerning a future judicial or official act."[32] Further, the new foreign parliament member offense is limited to bribery "in connection with his/her mandate or functions."[33]

In response to concerns about this apparent deviation from the Convention requirements, German officials assured the examiners that their statutory language has been interpreted broadly in the past to include acts outside of the official's authorized competence.[34] Apparently, all that is required is that the act of the official bears a "loose connection with his/her office or service."[35]

Corporate liability. Legal persons are not subject to criminal punishment in Germany.[36] During 1998-99, the nation explored the concept and ultimately declined to impose criminal liability on corporate entities.[37] This leaves the only exposure to liability in the civil realm, pursuant to the Administrative Offences Act.[38]

Under the Administrative Offences Act, there are two different standards for corporate liability, depending on the status of the individual offender. A corporation can be civilly liable for the offenses of persons who are fully authorized representatives or partners in the company.[39] The acts of individuals who do not hold leading roles in the company can result in corporate liability where the company willfully or negligently fails to supervise in such a way as to prevent the individual's wrongful act.[40]

The Administrative Offences Act may not allow German authorities to rigorously pursue corporate entities for bribery offenses. The fines contemplated in the act rarely are imposed for corruption offenses.[41] In defense of the act, German authorities highlight the use of provisions calling for forfeiture of proceeds or monetary sanctions in the amount of replacement value against legal persons.[42] However, in practice, these fines are not available in the absence of a proceeding against a natural person.[43]

German law recognizes a defense to corporate liability if the natural person who acted for the company cannot be prosecuted for "legal reasons."[44] According to the German authorities, such "legal reasons" include procedural impediments (*e.g.*, expiration of the statute of limitations).[45] This "legal reasons" exception potentially could constitute a gap in enforcement of the Convention. Germany is party to an international agreement called the Schengen Agreement whereby the legal holdings in one party's court system can have binding effect in the other parties' court systems.[46] In the event that one party to that agreement handled a case against a natural person, that result would have binding effect in Germany and Germany could not bring the same proceeding again in its own courts. Therefore, because cases against legal persons in Germany are derivative from cases against natural persons, a prior ruling against a natural person in another Schengen Agreement country could bar a German action against the legal person.[47]

Jurisdiction. German law embraces both territorial and nationality jurisdiction.[48] Territorial jurisdiction can be based on the fact that the individual acted, failed to act, gave rise to an outcome of an offense, or intended an outcome of an offense to occur in Germany.[49]

Germany has enacted a broad provision for nationality jurisdiction over German citizens who commit bribery of foreign officials abroad.[50] In other areas of its criminal law, Germany limits extraterritorial exercises of jurisdiction to cases in which the citizen's act not only violated German law, but also the law of the country in which the citizen acted.[51] In the realm of bribery of a foreign official, however, Germany eschewed this dual criminality requirement, allowing nationality jurisdiction "regardless of the law of the place of commission."[52]

Statute of limitations. The statute of limitations for the bribery offenses is five years with certain provisions for tolling.[53] In no event, however, can a prosecution occur more than ten years after the offense was committed.[54]

Korean Implementing Legislation

At the time that Korea underwent its Convention evaluations, it was the most recent addition to OECD, as well as one of the first countries to pass Convention implementing legislation.[55] In order to implement its new obligations under the Convention, Korea passed "The Act on Preventing Bribery of Foreign Public Officials in International Business Transactions," referred to as the "Foreign Bribery Prevention Act" or "FBPA."[56]

Defining the substantive offense of bribery of a foreign public official and its defenses. While in Korea treaty obligations have the same legal force as legislation,[57] as a practical matter, the FCBA is the controlling statement of Korean law. Since the passage of the FCBA postdated the Convention, the FCBA would prevail in the event of a conflict between the two.[58] Further, there is a possible shortcoming in the Convention that could prevent it from being applied directly – there is no statement of punishment.[59] Therefore, for all practical purposes, the FCBA is the relevant source of Korean law on bribery of foreign public officials.

Korean law contains three exceptions to the offense of bribery of a foreign public official. The first exception is where the bribery "payment is permitted by the law of the foreign official's country."[60] This exception is based on the commentary to the Convention that states "It is not an offence, however, if the advantage was permitted or required by the written law or regulation of the foreign public official's country, including case law."[61] On its face, the Korean version of this exception is not limited to *written* foreign law. However, the Korean Ministry of Justice published a manual on the requirements if its implementing legislation explaining, among other things, that this defense requires the foreign law to be written.[62]

Second, there is an exception based on the "small facilitation payments" language in the commentary.[63] Korea does not limit this exception to payments, but rather states the exception in terms of "small pecuniary *or other advantage*."[64] This could include things like providing information or personal contacts.[65] The peer evaluation of Korea expressed concern that there was not enough guidance to courts on what could qualify under this exception.[66]

Third, mistake of law is a potential defense to all Korean criminal offenses.[67] Normally, the Ministry of Justice provides opinions of law to the public, reliance upon which can form the basis for the defense.[68] However, in the realm of the Convention, there is the added opinion of law articulated in the detailed manual published by the Ministry of Justice.[69] While commending Korea for its initiative in publishing such an explanatory manual, the peer review process noted some potential inconsistencies between the manual and the Convention.[70] If a court ultimately found that the manual explanation was incorrect, reasonable reliance on that document could provide a basis for the mistake of law defense.[71]

Corporate liability. Korea worked a substantial change in its legal system by introducing corporate criminal liability in the FBPA.[72] There is both an objective and a subjective element to the test for liability.[73] That is, the act objectively must have been done for the company and the employee subjectively must have intended to act for the company.[74] The subjective element calls a factor analysis into play.[75] The rank of the individual actor is irrelevant to the question of legal person liability.[76]

Corporate liability in Korea is viewed as derivative liability. In order to convict a legal person, a natural person must be identified and legally found to have bribed a foreign public official.[77] Therefore, the corporation will be insulated from liability where the natural person has not been identified, proceeded against, convicted, or sanctioned in any way.[78]

There is an exception to corporate liability where the legal person "has paid due attention or exercised proper supervision to prevent" the bribery.[79] The manual published by the Ministry of Justice states that a company policy or code of conduct could exempt the company from liability pursuant to this exception.[80] The exception does not require the company to demonstrate compliance with its own policies.[81]

Further, Korean law limits the liability of legal persons to acts of its agents "in relation to the business of the legal person."[82] The commercial landscape in Korea is dominated by enterprise groups, which consist of large conglomerates often owned by a single family.[83] In the event that an agent of one company within the enterprise group bribed a foreign public official for the benefit of another company within the enterprise group, this limitation on corporate criminal liability could prevent either company from being held responsible.[84]

Jurisdiction. Korean criminal law extends territorial jurisdiction to any offenses that are committed in Korea.[85] Officials insist that because the Convention is part of Korean law, its jurisdiction will be interpreted broadly to cover situations where just part of the offense has occurred in Korea.[86] In the case of a legal person, however, territorial jurisdiction will only be exercised if there is also jurisdiction over the actual individual that perpetrated the offense.[87] Therefore, if the bribery takes place abroad, there may be a lack of jurisdiction over a Korean legal person.[88]

In principle, Korea also has nationality jurisdiction.[89] The criminal code provides such jurisdiction, even in the absence of dual criminality.[90] However, Korea can decline to exercise such jurisdiction where there is a lack of reliable evidence or that is "any other legal reason."[91]

Statute of limitations. The statute of limitations period is five years, which can be stayed for various reasons.[92] For example, if the perpetrator stays outside of Korea's jurisdiction to avoid prosecution, the limitations period begins when the accused returns to Korea.[93]

Miscellaneous potential deviations from the Convention. The Korean principles of conspiracy and attempt may not provide adequate enforcement of the Convention. Conspiracy is not punishable as a stand-alone offense.[94] That is, the agreement to commit bribery of a foreign official, without any further action, is not a cognizable criminal offense.[95] The lack of conspiracy as a stand-alone offense does not violate the Conven-

tion, however, since this is a broad legal principle in the Korean legal system and not exclusive to bribery of a foreign public official.[96]

Korea does not punish unsuccessful attempts to commit crimes unless there is a special provision in the law.[97] While there are provisions in Korean law that could be construed to punish attempts to commit domestic bribery, there are no such provisions with respect to bribery of a foreign public official.[98] This potential disparity may conflict with Article 1.2 of the Convention that requires equal treatment of domestic and foreign bribery with respect to attempt.[99]

Finally, despite the exploding economic interrelationship between Korea and North Korea, Korea does not consider North Korea to be a state.[100] Therefore, North Korean officials are not considered to be "foreign public officials" under Korean law.[101]

Evaluation of Implementing Legislation

It is not surprising that the implementing legislation passed by Korea and Germany is not uniform; Korea and Germany are two very different countries in terms of history, fundamental legal principles, and preexisting international arrangements. In both states, however, there are significant problems with implementation that could degrade the overall effectiveness of the Convention.

Defining the substantive offense of bribery of a foreign public official and its defenses. With respect to the bribery offense and its defenses, Germany appears to be in line with the Convention. The exceptions provided by Korea, however, could be viewed as a failure to implement its Convention obligations. By not limiting the language of the first exception for "payment [] permitted by the law of the foreign official's country" to *written* law,[102] Korea risks a court interpreting it beyond the scope of the convention. Further, the second exception for "small pecuniary *or other advantage*" lacks guidance to Korean courts on what qualifies as "other advantage."[103] By even including the "other advantage" language, it is arguable that the FBPA exception exceeded the scope of the Convention commentary exception. However, the justification provided in the commentary could apply equally to small non-monetary advantages.[104] Consequently, it is merely the lack of guidance that is a potential problem. The existence of the third exception for mistake of law necessitates a special measure of care in drafting the explanatory manual published by the Ministry of Justice. Based on the apparent inconsistencies between that manual and the Convention, it appears that Korea may be providing a gap in enforcement within its legal system for reasonable reliance on errors in the manual.

Corporate liability. On the issue of corporate liability, Germany and Korea have taken different approaches to punishing corporations, but both seem to have failed in implementing an acceptable program. Germany has taken the civil liability approach, [105] while Korea has taken the criminal liability approach.[106] In both countries, potential corporate liability is derivative in nature.[107] That is, the corporation ultimately will not be punished in the absence of a viable case against a natural person.[108] This lack of stand-alone liability for corporate entities leaves a potential gap in enforcement of the Convention provisions.[109]

There are further implementation problems relating to corporate liability. An existing international obligation in Germany presents the possibility of non-enforcement against a German legal person where a case against a natural person is adjudicated in another state.[110] The two additional exceptions provided in the Korean implementing legislation also could impede enforcement. The supervision exception is a potentially gaping hole if it could be substantiated by the mere existence of a company code of conduct.[111] Further, by requiring the acts of agents to be "in relation to the business of the legal person," Korea is inviting manipulation of the system by companies willing to bribe for the benefit of sister companies.[112]

Jurisdiction. The German implementing legislation fully complies with the Convention requirements on jurisdiction. In fact, Germany went above and beyond the convention by implementing nationality jurisdiction without the dual criminality requirement for the Convention bribery offense.[113]

Korea may impermissibly limit the extent of its jurisdiction, however. Because Korea will not exercise territorial jurisdiction over a Korean legal person in the absence of jurisdiction of the natural person, there is a potential gap in enforcement.[114] Further, the undefined nature of the "other legal reason" basis to decline exercising jurisdiction is open to interpretation and possible abuse.[115]

Statute of limitations. Both Korea and Germany have a base statute of limitations of five years, with various provisions for extension.[116] The peer review process did not come up with a definitive answer on whether five years was a sufficient limitations period as required by the Convention, and instead recommended a comparative analysis at a later date.[117] After more time has passed, it will be possible to analyze whether a five year period provides "an adequate period of time for … investigation and prosecution."[118]

Miscellaneous other deviations from the Convention. Korea's additional deviations from the Convention are troubling. The apparent disparity in treatment between domestic bribery and foreign bribery as it relates to attempts could constitute a failure to comply with the Convention. Further, Korea's position on the inapplicability of its implementing legislation to the public officials North Korea is a vast shortcoming given their increasing economic ties.

Prosecutions Under the Convention Implementing Legislation

In addition to problems implementing the Convention, there are also potential problems at the enforcement stage. While Korea had its share of shortcomings in implementation, it is Germany that is lacking when it comes to enforcement.

Germany

There is no data evidencing Convention prosecutions in Germany. The Convention entered into force for Germany on February 15, 1999.[119] The on-site visit of the Phase 2 peer review process, wherein the effectiveness of the Convention in practice is measured, took place in June of 2002.[120] In that almost three and a half years, Germany apparently did not prosecute one case to conviction under its implementing legislation.[121] While Germany accounted for over 5,000 cases of domestic bribery, there is no such staggering statistic with respect to bribery of a foreign public official.[122] This lack of data caused the lead examiners to request that Germany compile statistics at the federal level.[123] The failure of Germany to point to even one successful prosecution or investigation of foreign bribery illustrates how a Convention, even properly implemented, can fall short of its goals at the enforcement stage.

Korea

Korea has had more success prosecuting under the Convention. The Korean implementing legislation brought the Convention into force on February 15, 1999. The Phase 2 on-site visit took place in early 2004.[124] In that four years, Korea, like Germany, detected many cases of bribery of domestic public officials.[125] This is due, in part, to the establishment of several anticorruption investigation departments at the government and local levels.[126] While there are no investigation departments to deal with bribery of foreign public officials specifically, Korea has successfully adjudicated two cases under the FBPA.[127]

In the first case, a CEO of the Korean company Aulson and Sky paid $400,000 to a U.S. military officer through his wife in exchange for information.[128] The company was trying to get an edge in a bidding contest on three U.S. military contracts worth about $25 million.[129] It is not clear whether Korea or the United States detected this bribery offense. In the end, the CEO was sentenced to 18 months imprisonment and an $8,500 fine.[130] The company was fined $85,000. On appeal, the prison sentence for the CEO was suspended and the fines affirmed.[131]

In the second case, Seo, the CEO of a Korean company paid $20,000 to a U.S. Army official.[132] The United States had detected a conspiracy to raise bidding prices by bribing U.S. Army employees, which resulted in the conspirators being removed from the bidding process.[133] In order to stop any further investigation of conspiracy and gain access to the bidding process, the defendant paid the subject bribe to a U.S. Army official.[134] Seo was sentenced to ten months of imprisonment and fined $8,500.[135] The company was not prosecuted because the Koreans found that it "did not constitute a legal person."[136]

Conclusion

Whether at the implementation stage or the enforcement stage, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions has led a troubled existence. OECD can boast about the fact that thirty-six nations have signed the Convention and passed implementing legislation.[137] Such statistics, however, are not a measure of whether the goals of the Convention have been realized. A closer analysis of the implementing legislation and the associated record of enforcement shows that much work has yet to be done in the area of corruption.

About the Author

Joe West, 2004-2005 ILS Scholarship recipient.

Joseph West received the 2004 – 2005 International Law Section Scholarship. After graduating from Wayne State University Law School in May, Joe, accompanied by his wife Michele, will move from Westland, Michigan to Memphis, Tennessee to clerk for the Honorable Ronald Gilman of the Sixth Circuit Court of Appeals. Following the one-year clerkship, he will return to Michigan to join Dykema Gossett's litigation department.

Endnotes

1 *http://www.oecd.org/about/0,2337,en_2649_201185_1_1_1_1_1,00.html* (last visited Feb. 5, 2005). A list of the thirty member nations is available at http://www.oecd.org/document/58/0,2340,en_2649_201185_1889402_1_1_1_1,00.html (last visited Feb. 5, 2005).

2 *Id.* (recognizing the need to "promote rules of the game in areas where multilateral agreement is necessary for individual countries to make progress in a globalised economy").

3 *http://www.oecd.org/about/0,2337,en_2649_34855_1_1_1_1_1,00.html* (last visited Feb. 5, 2005). The Convention Preamble indicates that "[B]ribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions."

4 *Id.* The full text of the Convention can be found at *http://www.olis.oecd.org/olis/1997doc.nsf/LinkTo/daffe-ime-br(97)20* (last visited Feb. 5, 2005).

5 *http://www.oecd.org/document/12/0,2340,en_2649_34859_2057484_1_1_1_1,00.html* (last visited Feb. 5, 2005). Pursuant to Article 15 § 1, the Convention entered into force sixty days after five of the ten largest OECD exporting countries, which combined represented at least sixty percent of the exports of the ten largest exporters, deposited instruments of acceptance with the Secretary General of the OECD. The five ratifications that allowed the Convention to enter into force were Japan (October 13, 1998), Germany (November 10, 1998), United States (December 8, 1998), United Kingdom (December 14, 1998), and Canada (December 17, 1998). These five member states represent 66.4% of the exports of the ten largest OECD exporters. *See* Convention Annex, at 10 (listing statistics on OECD exports).

6 The non-member signatories are Argentina, Brazil, Bulgaria, Chile, Estonia, and Slovenia. *http://www.oecd.org/document/12/0,2340,en_2649_34859_2057484_1_1_1_1,00.html* (last visited Feb. 5, 2005).

7 *See, e.g.,* Convention Article 1 (requiring signatories to establish a new criminal offense of bribery of foreign public officials).

8 Estonia, the most recent addition to the list of signatories, deposited its ratification instrument on November 23, 2004 but has not yet enacted implementing legislation. http://www.oecd.org/document/12/0,2340,en_2649_34859_2057484_1_1_1_1,00.html (last visited Feb. 13, 2005).

9 The full, translated text of the implementing legislation for all signatories is available online at http://www.oecd.org/document/30/0,2340,en_2649_34859_2027102_1_1_1_1,00.html (last visited Feb. 16, 2005).

10 The Phase 1 and Phase 2 review processes are described in detail at http://www.oecd.org/document/21/0,2340,en_2649_34859_2022613_1_1_1_1,00.html (last visited Feb. 16, 2005) and http://www.oecd.org/document/27/0,2340,en_2649_34859_2022939_1_1_1_1,00.html (last visited Feb. 16, 2005), respectively.

11 *See id.*

12 Article 1 ¶ 1. This ten-element offense breakdown was utilized by several of the Phase 1 and Phase 2 evaluation reports. *See, e.g.*, Germany Phase 1 Report, http://www.oecd.org/dataoecd/14/1/2386529.pdf (last visited Feb. 13, 2005) at 2-4.

13 Article 1(4)(a).

14 Article 1(4)(b).

15 Article 1(4)(c).

16 The entire commentary is appended to the Convention at pp. 12-18. *See* http://www.olis.oecd.org/olis/1997doc.nsf/LinkTo/daffe-ime-br(97)20 (last visited Feb. 13, 2005).

17 Commentary at ¶ 4.

18 Commentary at ¶ 7.

19 Commentary at ¶ 9.

20 *Id.*

21 *Id.*[22] Article 2 states: "Each Party shall take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official."

23 *See* Commentary at ¶ 20 ("In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall not be required to establish such criminal responsibility.").

24 Article 4(1).

25 Commentary at ¶ 25.

26 Article 4(2).

27 Germany Phase 1 Report at 1, http://www.oecd.org/dataoecd/14/1/2386529.pdf (last visited Feb. 13, 2005).

28 *Id.*

29 *See* German Implementing Legislation, http://www.oecd.org/dataoecd/62/3/2377209.pdf (last visited Feb. 13, 2005).

30 *Id.*

31 *See* Article 1(4)(c).

32 *See* German Implementing Legislation, http://www.oecd.org/dataoecd/62/3/2377209.pdf (last visited Feb. 13, 2005).

33 *Id.*

34 Germany Phase 2 Report at ¶ 147 (noting three cases of officials acting outside of their official competence where bribery was successfully prosecuted), http://www.oecd.org/dataoecd/52/9/2958732.pdf (last visited Feb. 13, 2005).

35 *Id.*

36 Germany Phase 1 Report at 2.

37 Germany Phase 2 Report at ¶ 101 (discussing work and conclusions of the Commission on the Reform of the Criminal Law Sanction System).

38 Germany Phase 1 Report at 5.

39 *See* Germany Phase 1 Report at 5 (discussing German Administrative Offences Act at § 30(1)). The relevant portions of the German Administrative Offences Act are available at http://www.oecd.org/dataoecd/62/54/2377479.pdf (last visited Feb 14, 2005).

40 *See* Germany Phase 1 Report at 5 (discussing German Administrative Offences Act at § 130(1)).

41 Germany Phase 2 Report at ¶ 104. Reports also indicate that the amounts of sanctions under German law may not be a sufficient deterrent. *See id.* at 37.

42 *Id.* at ¶ 107.

43 *Id.* at ¶ 113. *See also id.* at ¶ 113 (noting that "in practice they have not had any bribery cases where they have proceeded against a legal person without having proceeded against the natural person"); *id.* at ¶ 123 ("[L]egal persons are prosecuted only as a secondary option.").

44 Germany Phase 1 Report at 18.

45 *Id.*; Germany Phase 2 Report at ¶ 121.

46 Germany Phase 2 Report at ¶ 121.

[47] *Id.* The fact scenario where this could arise is a non-German agent of a German corporation acting abroad.
[48] Germany Phase 1 Report at 9-10.
[49] *Id.* at 9.
[50] *Id.* at 10.
[51] *Id.*
[52] *Id.* (quoting Article 2.3 of the ACIB).
[53] *Id.* at 12.
[54] *Id.*
[55] Korea Phase 1 Report at 21, http://www.oecd.org/dataoecd/15/6/2388296.pdf (last visited Feb. 15, 2005).
[56] *Id.* at 1, 21. The full text of this implementing legislation is available at http://www.oecd.org/dataoecd/63/49/2378002.pdf (last visited Feb. 16, 2005).
[57] Korea Phase 1 Report at 1.
[58] Korea Phase 2 Report at ¶ 94, http://www.oecd.org/dataoecd/17/13/33910834.pdf (last visited Feb. 15, 2005).
[59] *Id.*
[60] Korea Phase 1 Report at 2.
[61] Commentary at ¶ 8.
[62] Korea Phase 2 Report at ¶ 90.
[63] Korea Phase 1 Report at 3.
[64] *Id.* at 2-3 (emphasis added).
[65] *Id.* at 3.
[66] *See id.* at 21; Korea Phase 2 Report at 29 (recommending review of the application of this exception after there has been "sufficient practice").
[67] *See* Korea Phase 2 Report at ¶ 84.
[68] *Id.* at ¶¶ 83-84.
[69] *Id.* at ¶ 85.
[70] *Id.* at ¶ 86.
[71] *Id.* at ¶¶ 84-86.
[72] *Id.* at ¶ 109.
[73] Korea Phase 1 Report at 8.
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] Korea Phase 2 Report at ¶ 120.
[78] *See id.* at 38.
[79] *Id.* at ¶ 115.
[80] *Id.* at ¶ 116.
[81] *Id.* at ¶ 117.
[82] *Id.* at ¶ 113.
[83] *Id.* at ¶ 112.
[84] *See id.* at ¶ 113.
[85] Korea Phase 1 Report at 11.
[86] *Id.*
[87] Korea Phase 2 Report at ¶ 118.
[88] *Id.*
[89] *See* Korea Phase 1 Report at 11.
[90] *Id.*
[91] *Id.*
[92] *Id.* at 14.
[93] *Id.*
[94] *Id.* at 6.
[95] *See id.*
[96] *See* Article 1.2 (requiring equal treatment of bribery of a foreign public official relating to conspiracy).
[97] *Id.* at 7.
[98] Korea Phase 2 Report at 99.
[99] *See* Convention Article 1.2 ("Attempt and conspiracy to bribe a foreign public official shall be criminal offences to the same extent as attempt and conspiracy to bribe a public official of that Party.").
[100] Korea Phase 2 Report at ¶¶ 103, 104 ("Trade between them has increased steadily, rising from US $221 million in 1998 to US $724 million in 2003. In addition, companies from the Republic of Korea have invested US $1.16 billion in North Korea in the eight years leading up to October 2003.").
[101] *Id.*
[102] Korea Phase 1 Report at 2.
[103] Korea Phase 1 Report at 2-3 (emphasis added).
[104] That is, that they would "not constitute payments made 'to obtain or retain business or other improper advantage.'" Commentary at ¶ 9.
[105] Germany Phase 1 Report at 5.
[106] Korea Phase 2 Report at ¶ 109.
[107] Germany Phase 2 Report at ¶ 113; Korea Phase 2 Report at ¶ 120.
[108] Germany Phase 2 Report at ¶ 113; Korea Phase 2 Report at ¶ 120.
[109] *See* Germany Phase 2 Report at ¶ 108 (noting concern as to whether the system of corporate liability is effective).
[110] Germany Phase 2 Report at ¶ 121.
[111] Korea Phase 2 Report at ¶¶ 116-17.
[112] *Id.* at ¶ 113.
[113] *See* Article 4(2) (requiring nationality jurisdiction to the extent recognized elsewhere in the party's law); Germany Phase 1 Report at 10 (noting dual criminality requirement elsewhere in German law).
[114] Korea Phase 2 Report at ¶ 118.
[115] Korea Phase 1 Report at 11.
[116] Korea Phase 1 Report at 14; Germany Phase 1 Report at 12.
[117] *See* Germany Phase 1 Report at 19; Korea Phase 2 Report at ¶ 148(a)(iv).
[118] Article 6.
[119] Germany Phase 1 Report at 1.
[120] Germany Phase 2 Report at ¶ 1.
[121] *See id.* at ¶ 97.
[122] *Id.*
[123] *Id.* at 27.
[124] Korea Phase 2 Report at ¶ 1.
[125] *Id.* at ¶ 14.
[126] *Id.*
[127] *Id.* at ¶ 15.
[128] *Id.* at ¶ 16.
[129] *Id.*
[130] *Id.*
[131] *Id.*
[132] *Id.* at ¶ 18.
[133] *Id.*
[134] *Id.*
[135] *Id.*
[136] *Id.* It is not clear how the company failed to meet the definition of a legal person.
[137] *See* The OECD Anti-Bribery Convention: Does it Work? at *http://www.oecd.org/dataoecd/43/8/34107314.pdf* (last visited Feb. 18, 2005).

Section Presentation: International Data Privacy Legislation

By: Kelly Dang, Wayne State University Law School, 2L

On January 18, 2005, the International Law Section held its Council Meeting. After the Council Meeting, Robert Rothman, Chief Privacy Officer of General Motors Corporation gave a presentation on the topic of international data privacy legislation.

According to Rothman, the issue of privacy is generally developing into a major area of both domestic and international practice. The situation is analogous to environmental law thirty years ago. However, it is important to note that the U.S. has a different approach to privacy legislation than the rest of the world. The U.S. regulates the misuse of personal information in the context of specific subject matters; whereas other countries tend to regulate the collection and transmission of personal information for any purpose. International data privacy laws, today, often take different approaches to the same issue --- resulting in a complexity that makes it difficult for multinationals to take advantage of cost savings related to standardization and centralization of global databases using modern technology.

Rothman's presentation was limited to the data privacy laws of the EU, Asia, Latin America, and other areas. A special emphasis was placed on EU data privacy laws because they are the best developed and often act as the model for the rest of the world.

Privacy laws of the EU

The 25 EU member countries and other non-EU European countries have enacted laws that safeguard an individual's personal data based on the European Privacy Directive. This European Privacy Directive (EU Directive) sets a minimum standard that is exceeded by many nations. Under the EU Directive, "personal data" is broadly defined and such data includes any information relating to an identified or identifiable person. Briefly stated:

- EU Directive defines the required legal bases for domestic collection and/or processing of personal information:
  - ◊ Data subject gives unambiguous consent
  - ◊ Processing is necessary for performance of a contract to which the data subject is a party
  - ◊ Processing is necessary to protect vital interests of data subject
  - ◊ Processing is necessary for performance of tasks carried out for the public interest or for the exercise of official authority
  - ◊ Processing is necessary for compliance with a legal obligation to which the controller is subject
  - ◊ Processing is necessary for the purposes of the legitimate interests pursued by controller or by the third party to whom data are disclosed. An exception applies where such interests are overridden by the interest for fundamental rights and freedoms on the data subject that require protection.
- EU Directive requires that personal information processing must comply with details of national law related to certain basic principles of notice, choice, onward transfer, security, data integrity, access, and enforcement.
- Transferring personal information outside of the EU is prohibited if it is sent to countries that the EU does not consider as having "adequate" privacy laws. The exception is if the data transfer was done subject to derogation. Although the US is not deemed to have adequate privacy laws, individual American companies can qualify for adequacy under a voluntary self-regulatory system called the Safe Harbor. This is essentially an arrangement negotiated by the U.S. and the EU that allows personal data to be transferred to U.S. companies that certify annually that they meet the negotiated requirements. Such requirements are essentially a slightly watered-down version of the EU Directive requirements.
- Derogations that are available under the EU Directive and that have been adopted by most EU countries include:
  - ◊ Data subject consents
  - ◊ Data transfer is made pursuant to standard contracts drafted and published by the EU
  - ◊ Data transfer is made pursuant to ad hoc contracts approved by appropriate Data Protection Authority
  - ◊ Data transfer is made pursuant to "binding corporate rules" approved by appropriate Data Protection Authority
  - ◊ Data transfer is necessary for the performance of a contract, on public interest grounds, or to protect the vital interests of the data subject.

◊ Data is made from a public register.

Privacy laws of Asia

While APEC Privacy Principles have been developed by the member states, data privacy legislation in Asia varies substantially between issues covered and its stages of development.

- Australia, New Zealand and Hong Kong have European-type legislation. Australian privacy laws do not apply to employee data, although expansion of coverage is under consideration.
- Japan recently passed a comprehensive privacy law in 2003. This legislation represents detailed regulations that further define the general words of the law that are being promulgated by various ministries.
- Pakistan recently passed a data protection law that is applicable only to foreign personal data being processed in Pakistan. It seems that Pakistan is positioning itself to be an international IT/data processor warehouse.
- Data privacy legislation was introduced in India, Thailand, and the Philippines. Korea and Taiwan continue to expand its existing legislation. China is currently research various approaches to privacy laws and will introduce legislation next year.

Privacy laws of Latin America

- Argentina has a very strict European-style law. It has received adequacy determination from the EU. However there is little or no enforcement to date. The country is now putting administrative mechanisms into place to ensure enforcement. Uruguay has very similar legislation in effect as well.
- Data privacy bills are pending in Brazil, Venezuela, Colombia, Peru, Chile, and Ecuador. The Brazilian draft has consent as the only available derogation. Venezuela has no basis for private entities to send personal data to "inadequate" countries.

Privacy laws in other areas

- Canada has comprehensive federal data protection legislation (PIPEDA) that covers personal data used for commercial purposes. Employee data is generally not covered under PIPEDA. Canadian provinces can pass stricter or more comprehensive laws -- Quebec, British Columbia and Alberta have already done so. Ontario is expected to pass additional privacy legislation this year. The USA Patriot Act raises legal issues related to retaining personal information on Canadian citizens in the U.S.

Rothman concluded the presentation by stating that data privacy is a very complex area of law. Often it is difficult for a client to see any value added in such regulations. Moreover, there is a fundamental conflict between compliance with a multitude of laws that may operate on a single global server and the need for companies to reduce cost by reducing complexity. In Rothman's opinion, privacy legislation is an important new area of law that neither in-house nor outside lawyers can afford to ignore.

About the Speaker

Robert Rothman joined the GM Legal Staff in Detroit in 1972, where he held a variety of positions. He became Attorney-in-Charge of Overseas Legal Matters in 1981, head of the Legal Staff's German office in 1984, and General Counsel of General Motors Europe, Zurich, Switzerland, upon its formation in 1986. From 1992 to 1997, he was Vice President and General Counsel of General Motors International Operations in Zurich; from 1997 to 1998, General Counsel of Delphi Automotive Systems in Troy, Michigan; and from 1999 to 2002, Director of eGM's Legal Affairs in Detroit. Rothman holds a JD from Ohio State University, an MBA from Duke University, and an AB in Chinese from the University of Michigan.

Death of the Pope Impacts International Law

By: Christi Patrick, Wayne State University Law School, 2L

On April 2, 2005, Pope John Paul II, leader of the Roman Catholic Church passed away in Rome from Parkinson's disease and other illnesses. Whether or not individuals agreed with the beliefs of Pope John Paul II, it is indisputable that he had a major impact upon international law. The Catholic Church estimates that there are roughly 1.1 billion Catholics worldwide, and over 2.3 million Catholics registered in diocese in Michigan, according to the Glenmary Research Center's Religious Congregations Membership Study 2000.

Pope John Paul II attempted to define the Catholic Church's role in the modern world. He was referred to as the "Pilgrim Pope" for having traveled greater distances than all of his predecessors combined. According to John Paul II, the trips symbolized bridge-building efforts between nations and religions, attempting to remove divisions created through history.

Pope John Paul II worked to combat communism, Nazism, fascism, and extreme capitalism. The success of his 1979 trip to Poland, an embarrassment to the atheist communist government, is often credited as contributing to the fall of the Soviet Union. He was also active in speaking against cultural relativism, feminism, and racism. The Pope's positions often were controversial, including his opposition to abortion, contraception, capital punishment, stem-cell research, human cloning, and euthanasia.

In addition to his impact upon international affairs and policy, Pope John Paul II also spoke about the importance of the development of international law. In a message regarding the celebration of the World Day of Peace, January 1, 2004, Pope John Paul II wrote that "[i]n this task of teaching peace, there is a particularly urgent need to lead individuals and peoples to respect the international order and to respect the commitments assumed by the Authorities which legitimately represent them. Peace and international law are closely linked to each another: law favors peace." The message emphasized that "the United Nations Organization, even with limitations and delays due in great part to the failures of its members, has made a notable contribution to the promotion of respect for human dignity, the freedom of peoples and the requirements of development, thus preparing the cultural and institutional soil for the building of peace."

On April 19, 2005, Cardinal Joseph Ratzinger became the 265th pope of the Catholic Church, accepting the name Pope Benedict XVI. It is likely that Pope Benedict XVI will continue to shape international law and world events.

St. Peter's Basilica, Vatican City

Michigan Law Students Excel in Jessup International Moot Court Competition

By: Christi Patrick, Wayne State University Law School, 2L

Jessup Central Region Championship Round Competitors and Judges [from left to right: Rajiv Punja (Case Western), Adam Rogalski (CW), Judge Reginald Routson (Hancock County Municipal Court Judge), Niki Dorsky (CW), Howard Fenton (Ohio Northern University Professor of Law), Beth Young (CW), Judge Jeffrey Sutton (U.S. Sixth Circuit Court of Appeals), Joseph Ashby (University of Michigan), Lubna Alam (UM), Adam Wolfson (UM) and Scott Risner (UM).] Photo courtesy of Brett Swaim.

Students from law schools in Michigan demonstrated superior abilities in international legal research and advocacy in the Phillip C. Jessup International Moot Court Regional Competitions of 2005. The staff of *Michigan International Lawyer* congratulates all of the competitors for exceptional performances in the prestigious competition.

In the **Jessup Central Regional Competition** hosted by Ohio Northern University Pettit College of Law, the team from **University of Michigan Law School** won Best Memorial and Second Place for Oral Advocacy. Lubna Alam of the University of Michigan won Best Overall Oralist in the Region, with Adam Wolfson of the University of Michigan ranked as Number 2, Ian Costello of **Michigan State University Detroit College of Law** ranked as Number 3, and Joseph Ashby of the University of Michigan ranked as the Number 4 Oralist in the region. The Central Regional Competition included teams from University of Akron, University of Virginia, Case Western University, Cleveland State University, University of Detroit Mercy, University of Michigan, Michigan State University, University of Richmond, Thomas Cooley Law School, and University of Toledo.

In the **Jessup East Regional Competition** hosted by Ohio State University Moritz College of Law, Christi Patrick of **Wayne State University Law School** was ranked as the Number 2 Oralist in the region. The East Regional Competition included teams from Cornell University, Duke University, Indiana University, University of North Carolina, Penn State University, University of Pittsburgh, University of Tennessee, Vanderbilt University, Wake Forest University, Washington & Lee University, and Wayne State University.

Calling all authors

The ***Michigan International Lawyer*** is issuing an invitation for article submissions for its Fall issue. Deadline for submissions is August 1, 2005. Submissions should be mailed to Professor Julia Ya Qin, Michigan International Lawyer, Wayne State University Law School, 471 W. Palmer, Detroit, MI 48202 or emailed to *ya.qin@wayne.edu*.

Minutes of Regular Section Meetings

By: Lois Elizabeth Bingham

On **Tuesday, November 9, 2004**, the International Law Section of the State Bar of Michigan held its regular scheduled Council Meeting at Miller Canfield in Troy, Michigan pursuant to notice duly circulated to all Section members.

The meeting was called to order at 4:25 p.m. by the Chair, Randolph M. Wright. The Chair welcomed those in attendance and thanked Miller Canfield for hosting the meeting.

Section members and guests in attendance introduced themselves and their professional affiliations.

Lois Elizabeth Bingham, Secretary of the Section, presented the Minutes of the Regular Meeting of the Council of the International Law Section held on June 15, 2004, which were published in the Fall 2004 Edition of the *Michigan International Lawyer.* Upon motion duly made, seconded and unanimously carried, it was resolved to approve these minutes as presented.

Next, Scott Fenstermaker, Treasurer of the Section, presented the Treasurer's Report. He indicated that the State Bar of Michigan had not finalized the financial report for the 12 months ending September 30, 2004 and had therefore not released any financial information to the Section. Accordingly, he stated that would make his report at the next meeting of the Council. Mr. Fenstermaker informed the Council that interest earned on the Section's account at the State Bar is held in an administrative account which accrues to the State Bar and not the individual sections of the State Bar.

Next, Randolph M. Wright, Chair of the Section, gave his report. He remarked that he was very pleased with the Annual Meeting of the Section which took place in October as there were over 50 persons in attendance. He then initiated discussion with the members present over the need to revitalize the committees of the Section, and that he was seeking volunteers to chair and also serve on the following committees: Business Law; Customs Immigration; Arbitration; International Family Law; and International Tax. Howard Hill suggested that the Council set performance standards for each committee. Lois Bingham suggested that an email communication be sent to all Section members to solicit participation. In response to questions regarding the role of Section committees, Mr. Wright indicated that there is currently no formal requirement that committees hold meetings, and that committee members serve as point persons on specific subject matters and assist in program development.

The Chair then discussed the Section's continued membership in the International Bar Association (IBA). At the Chair's request, Jan McMillan, past Chair, provided members with some background information on the IBA's claim that the Section was delinquent in the payment of membership dues. The Chair sought input from the members in attendance on whether the Section obtained any benefits from its membership in the IBA. The Chair asked Bruce Birgbauer and Lois Bingham to investigate the issue further and report back to the Council and the next Council meeting.

The Chair then asked for a report from Julia Qin and Kelly Dang on the *Michigan International Lawyer*. Ms. Dang indicated that the deadline for submission for the winter edition is November 15, with a publication deadline of December 1, 2004. She remarked that the winter edition will contain four (4) articles, one of which is a student article.

The Chair also discussed the Law Student Scholarship Program. He reminded the members that at the June 2004 Council Meeting, the Section tabled a discussion as to whether the Section should extend the Scholarship Program to all six (6) Michigan law schools. The Chair re-opened the matter and sought comments from those present. After reviewing the Bylaws of the Section, the past financial history of the Section, and the reasons why the Section started the Scholarship Program, it was decided that the Scholarship Program will consist of an essay competition open to students attending anyone of the six (6) Michigan law schools. The Scholarship Program will offer a 1st and 2nd prize cash award, and the opportunity to be published in the Michigan International Lawyer. The Chair appointed Howard Hill to establish a committee to implement the 2005 Scholarship Program and determine the essay topic and applicable rules of submission.

The Chair then discussed upcoming programs for the Section. He remarked that due to the current political climate, it was unlikely that the Section will be able to sponsor a trip to Cuba. He sought suggestions for other locations and indicated that a survey may be useful to determine interest. He further remarked that there were

no further details on the proposed tour of the Detroit Airport to learn of the newest security procedures. He then asked Howard Hill to provide a report on the program on the ED Data Privacy Directives scheduled to be presented at the next Council Meeting. Mr. Hill indicated that Robert Rothman, the Chief Privacy Officer of General Motors Corporation, had agreed to speak to the Section at the January 18, 2005 Council Meeting. The Chair then reported that Stuart Deming is working on a program on the Foreign Corrupt Practices Act and sought input from the members present as to whether a half-day formal presentation or a brief informal presentation after a Section meeting was preferred. Mr. Wright indicated that he will assist Mr. Deming with this program. Next, the Chair asked Bruce Birgbauer, the Chair-Elect, to comment on the 2005 Annual Meeting of the Section. Mr. Birgbauer indicated that details will be forthcoming at the next Council Meeting.

Next, the Chair asked Jan McMillan to comment on the December 2005 edition of the Michigan Bar Journal that will be dedicated to international law matters. Ms. McMillan reported that the Section will need to contribute 3 to 4 articles but that no deadlines had been established. Finally, the Chair asked Mr. Birgbauer for a report on the Section's contributions to Legal Briefs, a column in the Michigan Bar Journal. Mr. Birgbauer reminded members that as Chair-Elect, he is responsible for submitting a 75 word news item on the Section's activities. Mr. Birgbauer solicited suggestions for topics.

There being no further business to come before the meeting it was adjourned at 5:30 p.m.

Respectfully submitted for approval by the Section

Lois Elizabeth Bingham, Secretary
International Law Section,
State Bar of Michigan
January 18, 2005

On **Tuesday, January 18, 2005**, the International Law Section of the State Bar of Michigan held its regular scheduled Council Meeting at Berry Moorman, P.C. in Detroit, Michigan pursuant to notice duly circulated to all Section members.

The meeting was called to order at 4:20 p.m. by the Chair, Randolph M. Wright. The Chair welcomed those in attendance.

Section members and guests in attendance introduced themselves and their professional affiliations.

Lois Elizabeth Bingham, Secretary of the Section, presented the Minutes of the Regular Meeting of the Council of the International Law Section held on November 9, 2004. Upon motion duly made, seconded and unanimously carried, it was resolved to approve these minutes as presented.

Next, Scott Fenstermaker, Treasurer of the Section, presented the Treasurer's Report for the 3 months ending December 31, 2004. The year-to-date income was $11,910.00 and expenses were $1,209.01, for a net income of $10,700.00. When added to the beginning fund balance of $26,674.28, the Section has an ending fund balance of $37,375.27 as of December 31, 2004. Upon motion duly made, seconded and unanimously carried, it was resolved to approve the Treasurer's report as presented.

Next, Randolph M. Wright, Chair of the Section, gave his report. He indicated that he and Bruce Birgbauer have been invited to attend a Section Leaders Advisory Council, scheduled for February 17, 2005, and that they have also been invited to represent the Section at the Board of Commissioners Meetings scheduled for early spring in March or April, 2005, and in June.

Mr. Wright then remarked that he had received a good response to his request for volunteers to serve on Section committees, but that he was still seeking additional volunteers. He also commented that there appeared to be some problems with persons registering with the Section's listserv. Ms. Bingham remarked that she would investigate the problem.

The Chair then asked for a report from John Mogk on the *Michigan International Lawyer.* Mr. Mogk indicated that the Winter edition was to be released the next week and that the Spring edition would be released after March 21, 2005. The submission deadline for the Spring edition is February 1, 2005. He noted that the Winter edition had been delayed due to late submissions and editing issues associated with the transition of the publication of the journal to the publisher used by the State Bar. Mr. Mogk suggested that the Letter from the Chair should be submitted at a time closer to publication. Mr. Wright agreed with the suggestion and indicated he would respond accordingly.

Next, the Chair asked Mr. Howard Hill to discuss the Law Student Scholarship Program. Mr. Hill reported that the proposed contest rules had been circulated to members of the Council. He indicated Council members had expressed concerns regarding the proposed essay subject and also the requirement that all essays be submitted to all three judges, two of whom are professors at two of the laws schools whose students are eligible to participate in the essay contest. Accordingly, he noted that the committee had revised the contest rules so that students would be instructed to send

their submissions only to Mr. Hill, and that he would remove all identifying information before forwarding the essays to the other judges. He also noted that the topic of the essay contest is "Applicability of the Geneva Conventions to Persons Viewed as Terrorists." Mr. Hill further remarked that the committee intended to use student journals and area international law professors to promote the Section's Scholarship Program.

The Chair then solicited interest of the members in the proposed Metro Airport Tour. Mr. Wright indicated that he would follow up with Fred Smith to schedule a date and determine if there was a limit on the number of persons who could attend. If the tour takes place, Mr. Wright further agreed to submit an article to the *Michigan International Lawyer.*

The Chair then discussed the Section's upcoming program on the Foreign Corrupt Practices Act, to be facilitated by Stuart Deming. He solicited input from the members on whether the Section should proceed with an informal discussion for a smaller target audience or a larger presentation. The Chair indicated that Mr. Deming was scheduled to release a new book on the Foreign Corrupt Practices Act that is being published by the American Bar Association. He indicated that he would follow-up with Mr. Deming on the proposed format and topic of the upcoming program.

Mr. Wright then asked Mr. Birgbauer to discuss the upcoming Annual Meeting of the Section. Mr. Birgbauer indicated that the topic for the program to be presented in conjunction with the Annual Meeting of the Section would involve China and the Automotive Industry. He indicated that the date and location for the meeting and program had not been selected. He sought input from the members on whether the meeting should be held in Lansing during the Annual Meeting of the State Bar, or on a different date at a separate location.

Mr. Birgbauer further commented on the need to submit a 75-word article to the State Bar for publication in the monthly State Bar Journal. He solicited topic suggestions and volunteers to provide him with a 75-word article. Mr. Birgbauer then noted that the University of Windsor was sponsoring the Niagara International Moot Court Competition on March 18-19, 2005, and was in need of judges for the competition. He also remarked that Standard Federal was sponsoring the 58th Vienna Strauss Ball and that dance lessons would be available for interested persons.

The Chair then remarked that Wayne Law School was in need of practice judges for the Jessup Competition to be held at the school. Mr. Wright indicated that if anyone was interested to please contact him or Professor Fox at Wayne Law School.

Next, the Chair asked Mr. Birgbauer to discuss the Section's membership in the International Bar Association (IBA). Mr. Birgbauer indicated that the IBA has approximately 16,000 individual lawyers as members and approximately 180 bar association members. He noted that membership dues in the IBA for bar associations is determined by the number of members within the specific bar association. He remarked that based on the number of members the Section currently has, the Section would owe the IBA approximately 70.00 GBP per annum for membership dues. Mr. Birgbauer recommended that the Section continue its membership in the IBA and consider sending a Section representative to the IBA meeting for the next 2-3 years in order for the Section to determine if membership in the IBA has any real value to the Section. In response to concerns raised by members present who were familiar with format and costs associated with attending IBA meetings, the Chair tabled this issue for further discussion.

Finally, the Chair commented on the need for the Section to submit 3-4 articles by September 2005 for the State Bar of Michigan Journal - International Law Edition to be published in December 2005.

There being no further business, the meeting adjourned at 4:56 p.m.

Respectfully submitted for approval by the Section
Lois Elizabeth Bingham
Secretary
International Law Section,
State Bar of Michigan
April 19, 2005

Submissions Guidelines

The Michigan International Lawyer, which is published three times per year by the International Law Section of the State Bar of Michigan, is Michigan's premiere international law journal. Our mission is to enhance and contribute to the public's knowledge of world law and trade by publishing articles on contemporary international law topics and issues of general interest.

The Michigan International Lawyer invites unsolicited manuscripts in all areas of international interest. Manuscripts should be available in hard copy and electronic format. Manuscripts submitted for consideration cannot be returned unless accompanied by a $5 check or money order made payable to Wayne State University Law School for shipping and handling.

All submissions may be forwarded to the editor at the following address:

Professor John E. Mogk, Editor
Michigan International Lawyer
Wayne State University Law School
471 W. Palmer
Detroit, Michigan 48202
(313) 577-3955
jmogk@yahoo.com

Event Calendar 2004 -2005:
Meetings, Seminars, & Conferences of Interest

S = Section M = Michigan N =National I =International ☎ =Teleconference

M Saturday, May 14, 2005
Michigan Trial Lawyers Association Annual Banquet
Dearborn, MI
http://www.mtla.net/events.html

☎ Tuesday, May 17, 2005
AILA Teleconference: O And P Visas
http://www.aila.org/contentViewer.aspx?bc=8,3660,7996

N Wednesday, May 18, 2005
ABA General Practice, Solo & Small Firm Meeting
Miami, FL
http://www.abanet.org/cle/compcal.html

N Wednesday, May 18, 2005
API Annual Conference on Prepaid Legal Services
San Francisco, CA
http://www.abanet.org/cle/compcal.html

M Thursday, May 19, 2005
Increasing Your Firm's Profitability in a Challenging Economy
Grand Rapids, MI
http://www.michbar.org/e-journal/Profitability_Seminar.pdf

N Thursday, May 19, 2005
The Role of International Tribunals
Washington, DC
http://www.abanet.org/adminlaw/letter_may19.doc

N Friday, May 20, 2005
International Litigation Update: Hot Topics in Int'l Litigation
Miami, FL
http://www.abanet.org/intlaw/meet/flalitigation.pdf

☎ Tuesday, May 24, 2005
AILA Teleconference: Open Forum-Discussion of PERM
http://www.aila.org/contentViewer.aspx?bc=8,3660,9051

M Thursday, May 26, 2005
Annual Tax Conference
Plymouth, MI
http://www.michbar.org/tax/summerconference.cfm

N Thursday, May 26, 2005
Washington Colloquium on the Inter-American Human Rights System
Washington, DC
http://www.wcl.american.edu/humright/hracademy/2005/meeting.cfm

I Friday, May 27, 2005
Regional Trade Agreements and the WTO Legal System
Edinburgh, UK
http://www.hss.ed.ac.uk/ila/index.htm

N Tuesday, May 31, 2005
2005 Summer Academy on Human Rights & Humanitarian Law
Washington, DC
http://www.wcl.american.edu/humright/hracademy/

N Wednesday, June 01, 2005
National Conference on Professional Responsibility & Client Protection
Chicago, IL
http://www.abanet.org/cle/compcal.html

N Thursday, June 02, 2005
ABA Conference on Article 9 of the UCC
Chicago, IL
http://www.abanet.org/cle/compcal.html

M Friday, June 03, 2005
Annual Business Law Section Banquet
Mt. Pleasant, MI
http://www.michbar.org/business/calendar.cfm

☎ Tuesday, June 07, 2005
AILA Teleconference: Retention & Loss of U.S. Citizenship with Dual Nationality
http://www.aila.org/contentViewer.aspx?bc=8,3660,8529

M Friday, June 10, 2005
Upper Michigan Legal Institute
Mackinac Island, MI
http://www.michbar.org/news/releases/archives05/UMLI_reg.pdf

N Friday, June 10, 2005
Drivers for the Evolution of U.S. Environmental Laws and Practice
Baltimore, MD
http://www.abanet.org/publicserv/environmental

N Friday, June 10, 2005
National Spring Conference on the Environment
Baltimore, MD
http://www.abanet.org/publicserv/environmental/2005SCELSpringConf.html

S Tuesday, June 14, 2005
International Law Section Council Meeting
Detroit Athletic Club
http://www.michbar.org/international/calendar.cfm

☎ Tuesday, June 14, 2005
AILA Teleconference: Good Remedies for New Practitioners Series
http://www.aila.org/contentViewer.aspx?bc=8,3660,8532

M Thursday, June 16, 2005
ICLE Creditors' Rights 2005 Seminar
Troy, MI
http://www.icle.org/seminars/seminar_schedule.cfm?PRODUCT_CODE=2005CR1701

N Wednesday, June 22, 2005
AILA Annual Conference
Salt Lake City, UT
http://www.aila.org/contentViewer.aspx?bc=8,3660,7972

N Thursday, June 23, 2005
Organization & Time Management Skills for Lawyers
Washington, DC
http://www.abanet.org/cle/compcal.html

M Friday, June 24, 2005
Michigan Defense Trial Counsel's 27th Summer Conference
Acme, MI
http://www.mdtc.org/pdf/MDTCspon05final.pdf

M Thursday, June 30, 2005
ICLE Estate and Financial Planning Seminar
Troy, MI
http://www.icle.org/seminars/seminar_schedule.cfm?PRODUCT_CODE=2005CR2620

I Thursday, June 30, 2005
Hague Joint Conference on Contemporary Issues of Int'l Law
The Hague
http://www.asser.nl/

S TBA
Security Procedures Related to Air Travel
http://www.michbar.org/international/events.cfm

I **Sunday, July 03, 2005**
Annual Program in International Human Rights
Oxford, UK
http://www.gwu.edu/%7Especprog/abroad/oxford.html

☎ **Tuesday, July 19, 2005**
AILA Teleconference: Understanding Immigration Related Security Checks
http://www.aila.org/contentViewer.aspx?bc=8,3660,9009

N **Thursday, August 04, 2005**
ABA Annual Meeting
Chicago, IL
http://www.abanet.org/annual/2005/

N **Friday, August 05, 2005**
ABA Administrative Law Section Annual Meeting
Chicago, IL
http://www.abanet.org/adminlaw/calendar.html

N **Friday, August 05, 2005**
ABA International Law Section Annual Meeting
Chicago, IL
http://www.abanet.org/annual/2005/

N **Thursday, August 25, 2005**
International Trust and Estate Planning
Seattle, WA
http://www.ali-aba.org/

I **Wednesday, August 31, 2005**
49th Congress of the Union Internationale des Avocats
Paris, France
http://www.abanet.org/intlaw/meet/uia_sept_2005.pdf

N **Friday, September 16, 2005**
AILA Fall CLE Conference
San Francisco, CA
http://www.aila.org/contentViewer.aspx?bc=8,3660,7829

I **Thursday, September 29, 2005**
Customary International Law: Challenges, Practices, Debates
Montreal, Canada

I **Thursday, September 29, 2005**
Forum on Air and Space Law
Montreal, Canada
http://www.abanet.org/cle/compcal.html

N **Thursday, September 29, 2005**
Going International: Fundamentals of Int'l Business Transactions
Chicago, IL
https://www.ali-aba.org/aliaba/CL037.HTM

N **Friday, September 30, 2005**
Immigration in the 21st Century
St. Petersburg, FL
http://www.aila.org/contentViewer.aspx?bc=8,3660,8937

S **Thursday, October 06, 2005**
International Law Section Annual Meeting, Business and Legal Challenges in China and India for Automotive Suppliers
http://www.michbar.org/international/events.cfm

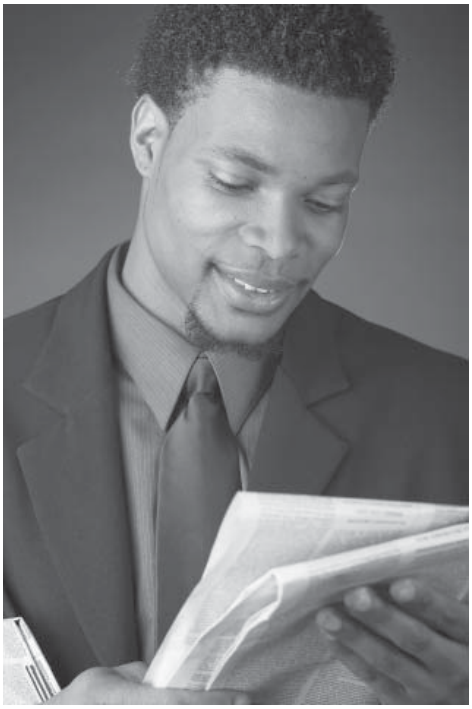
N **Thursday, October 06, 2005**
AILA Fundamentals of Immigration Law Conference
Scottsdale, AZ
http://www.aila.org/contentViewer.aspx?bc=8,3660,8853

N **Thursday, November 17, 2005**
ABA Administrative Law Conference
Washington, DC
http://www.abanet.org/adminlaw/calendar.html

N **Thursday, February 09, 2006**
ABA Midyear Meeting
Salt Lake City, UT
http://www.abanet.org/midyear/2005/

N **Wednesday, March 29, 2006**
American Society of International Law Annual Meeting
Washington, DC
http://www.asil.org/events/annualmeeting.html

N **Thursday, May 04, 2006**
Immigration Law: Basics and More
Washington, DC
https://www.ali-aba.org/aliaba/crslst2.asp#D



Send us your news!

The MIL will begin publishing a member news section reporting job changes, weddings, births, and other life events. Please send your news to *capatrick@gmail.com*.

State Bar of Michigan

International Law Section Leadership Roster 2004-2005

CHAIR:

Randolph M. Wright
Berry Moorman PC
255 E. Brown St #320
Birmingham, MI 48009-6210
Telephone: (248) 645-9680
Fax: (248) 645-1233
rwright@berrymoorman.com

CHAIR-ELECT:

Bruce D. Birgbauer
Miller, Canfield, Paddock & Stone
150 W. Jefferson #2500
Detroit, MI 48226-4415
Telephone: (313) 496-7577
Fax: (313) 496-8451
birgbauer@millercanfield.com

SECRETARY:

Lois E. Bingham
RL Polk & Co.
26955 Northwestern Highway
Southfield, MI 48034
Telephone: (248) 728-7791
Fax: (248) 728-7502
lois_bingham@polk.com

TREASURER:

Scott T. Fenstermaker
3607 Elder Road S.
West Bloomfield, MI 48324
Telephone: (248) 360-2182
Fax: (248) 360-2182
scott_fenstermaker@yahoo.com

COUNCIL:

Term Expiring 2005

Narinder J. S. Kathuria
3331 Bloomfield Shore Drive
West Bloomfield, MI 48323
Telephone: (248) 855-8159
Fax: (248) 855-8426
nari@aol.com

Marc C. McGuire
Delphi Automotive Systems
PO Box 5052
MC 480-414-420
Troy, MI 48007
Telephone: (248) 813-2517
Fax: (248) 813-2491
marc.c.mcguire@delphi.com

Andrew Segovia
General Motors Corporation
300 Renaissance Center
MC 482-C25-C22
Detroit, MI 48265
Telephone: (313) 665-4745
Fax: (313) 665-4695
andrew.segovia@gm.com

James S. Serocki
KPMG LLP
150 West Jefferson, Suite 1200
Detroit, MI 48243-1507
Telephone: (313) 983-0301
Fax: (313) 983-0008
jserocki@kpmg.com

Nicholas J. Stasevich
Butzel Long PC
150 West Jefferson
Detroit, MI 48226
Telephone: (313) 225-7035
Fax: (313) 225-7080
stasevich@butzel.com

Term Expiring 2006

Frederick J. Frank
Honigman Miller Schwartz and Cohn LLP
2290 First National Bldg
Detroit, MI 48226
Telephone: (313) 465-7384
Fax: (313) 465-7385
fjf@honigman.com

John E. Mogk
1000 Yorkshire Road
Grosse Pointe Park, MI 48230
Telephone: (313) 885-4589
Fax: (313) 885-5569
jmogk@yahoo.com

Frederick B. Smith
Office of Assistant Chief Counsel
US Customs Service
477 Michigan Ave #281
Detroit, MI 48226
Telephone: (313) 442-0378
Fax: (313) 226-5559
frederick.b.smith@customs.treas.gov

Peter Swiecicki
Baker & McKenzie
3 W. Lane
Dearborn, MI 48124
Telephone: (313) 510-6450
piotr.swiecicki@bakernet.com

Term Expiring 9/2007

Sheryln L. Adle
Compuware Corporation
One Campus Martius
Detroit, MI 48226
Telephone: (313) 227-2834
sheryl.adle@compuware.com

William H. Dance
Fragomen, Del Rey, Bernsen and Loewy
2301 West Big Beaver Road
Ste. 225
Troy, MI 48084
Telephone: (248) 649-5404
Fax: (248) 649-5121
wdance@fragomen.com

Carla S. Machnick
Miller, Canfield, Paddock & Stone
150 West Jefferson Ste. 2500
Detroit, MI 48226
Telephone: (519) 977-1555
Fax: (519) 977-1566
machnick@millercanfield.com

COMMITTEE CHAIRS:

Business Law

Peter Swiecicki
Baker & McKenzie
3 W. Lane
Dearborn, MI 48124
Telephone: (313) 510-6450
piotr.swiecicki@bakernet.com

Scott T. Fenstermaker
3607 Elder Road S.
West Bloomfield, MI 48324
Telephone: (248) 360-2182
Fax: (248) 360-2182
scott_fenstermaker@yahoo.com

Frederick J. Frank
Honigman Miller Schwartz and Cohn LLP
2290 First National Bldg
Detroit, MI 48226
Telephone: (313) 465-7384
Fax: (313) 465-7385
fjf@honigman.com

Nicholas J. Stasevich
Butzel Long, P.C.
150 W. Jefferson Ave., Ste 900
Detroit, MI 48226
Telephone: (313) 225-7035
Fax: (313) 225-7080
stasevic@butzel.com

State Bar of Michigan

International Law Section Leadership Roster 2004-2005

Customs

Andrew P. Doornaert
Miller, Canfield, Paddock & Stone, P.L.C.
150 West Jefferson Ave.
Ste 2500
Detroit, MI 48226-4415
Telephone: (313) 496-8431
Fax: (313) 496-8452
doornaert@millercanfi eld.com

Frederick B. Smith
Office of Assistant Chief Counsel
US Customs Service
477 Michigan Ave #281
Detroit, MI 48226
Telephone: (313) 442-0378
Fax: (313) 226-5559
frederick.b.smith@customs.treas.gov

Immigration Law

Linda Armstrong
Butzel Long P.C.
150 West Jefferson, Suite 900
Detroit, MI 48226
Telephone: (313) 983-7476
Fax: (313) 225-7080
Armstrong@butzel.com

Ingrid K. Brey
Law Offi ces of Ingred K. Brey, P.C.
15124 Kercheval
Grosse Pointe Park, MI 48230
Telephone: (313) 822-8888
Fax: (313) 822-8822
ibrey@ikbpc.com

Andrea Olivos-Kah
Miller, Canfield, Paddock & Stone
150 W. Jefferson, Suite 2500
Detroit, MI 48226
Telephone: (313) 963-6420
Fax: (313) 496-8452

International Dispute Resolution

Randolph M. Wright
Berry Moorman PC
255 E. Brown St #320
Birmingham, MI 48009-6210
Telephone: (248) 645-9680
Fax: (248) 645-1233
rwright@berrymoorman.com

Mary A. Bedikian
Professor of Law
Director of Alternative Dispute Resolution Program
Michigan State University, College of Law
368 Law College Building
East Lansing, MI 48824-1300
Telephone: (800) 844-9352
Fax: (517) 432-0098
bedik@law.msu.edu

International Family Law

Jan Rewers McMillan
400 Galleria Officentre Suite 117
Southfield, MI 48034
Telephone: (248) 352-8480
Fax: (248) 352-8680
jrmcmillan@provide.net

International Tax

Michael Domanski
Honigman Miller Schwartz and Cohn, LLP
660 Woodward Avenue
2290 First National Building
Detroit, MI 48226-3506
Telephone: (313) 465-7352
Fax: (313) 465-7353
mdomanski@honigman.com

James S. Serocki
KMPG LLP
150 West Jefferson, Suite 1200
Detroit, MI 48243-1507
Telephone: (313) 983-0301
Fax: (313) 983-0008
jserocki@kpmg.com

Don Wilson
Deloitte & Touche, LLP
600 Renaissance Center #900
Detroit, MI 48243
Telephone: (313) 396-5848
Fax: (313) 566-5025
dwilson@dttus.com

Brian J. Sullivan
Deloitte & Touche, LLP
600 Renaissance Center #900
Detroit, MI 48243
Telephone: (313) 396-5848
Fax: (313) 566-5025
bsullivan@dttus.com

Website Committee

Frederick J. Frank
Honigman Miller Schwartz and Cohn LLP
2290 First National Bldg
Detroit, MI 48226
Telephone: (313) 465-7384
Fax: (313) 465-7385
fjf@honigman.com

Carla S. Machnick
Miller, Canfield, Paddock & Stone
150 West Jefferson Ste. 2500
Detroit, MI 48226
Telephone: (519) 977-1555
Fax: (519) 977-1566
machnick@millercanfield.com

LIAISONS:

Academic Liaison:
Virginia B. Gordan
Assistant Dean of International Programs
The University of Michigan – Law School
941 Legal Research Building
Ann Arbor, MI 48109-1215
Telephone: (734) 764-5269
Fax: (734) 763-9182
vgordan@umich.edu

Commissioner Liaison:
Thomas W. Cranmer
Miro Weiner & Cranmer, PC
38500 Woodward Ave., Suite 100
P. O. Box 908
Bloomfield Hills, MI 48304
Telephone: (248) 258-1202
Fax: (248) 646-5052
tcranmer@mirolaw.com

State Bar of Michigan

International Law Section Leadership Roster 2004-2005

Michigan International Lawyer:

Professor John E. Mogk
Wayne State University
Law School
1000 Yorkshire Road
Grosse Pointe Park, MI 48230
Telephone: (313) 577-3955
Fax: (313) 885-5569
jmogk@yahoo.com

Professor Julia Y. Qin
Wayne State University
Law School
471 W. Palmer
Detroit, MI 48202
Telephone: (313) 577-3940
Fax: (313) 577-2620
ya.quin@wayne.edu

Kelly Dang
Wayne State University
Law School
812 Gott
Ann Arbor, MI 48103
Telephone: 734-255-0838
kellytdang@gmail.com

Thomas Lee
Wayne State University
Law School
1902 4th Street NW
Grand Rapids, MI 49504
x95lee@gmail.com

Christi Patrick
Wayne State University Law School
250 East Harbortown Drive #711
Detroit, MI 48207-5011
Telephone: (313) 567-4937
capatrick@gmail.com

EX-OFFICIO:

Jan Rewers McMillan
Law offices of Jan Rewers McMillan
400 Galleria Officentre #117
Southfield, MI 48034
Telephone: (248) 352-8480
Fax: (248) 352-8680
jrmcmillan@provide.net

Stuart H. Deming
259 East Michigan Avenue, Suite 406
Kalamazoo, MI 49007-6114
Telephone: 616) 382-8080
Fax: (616) 382-8083

Godfrey J. Dillard
Attorney at Law
PO Box 311421
Detroit, MI 48231
Telephone: (313) 964-2838
Fax: (313) 259-9179
godfreydillard@compuserve.com

Stephen W. Guittard
131 E 66th St. #2A
New York, NY 10021-6129
Telephone: (212) 628-6963

Howard B. Hill
PO Box 36632
Grosse Pointe Farms, MI 48236
Telephone: (313) 882-8184
Email: howardbhill@comcast.net

Professor John H. Jackson
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 662-9837
Fax: (202) 662-9408
jacksojo@law.georgetown.edu

Robert D. Kullgren
Varnum, Riddering, Schmidt &
Howlett LLP
Bridegewater Place
PO Box 352
Grand Rapids, MI 49501-0352
Telephone: (616) 336-6000
Fax: (616) 336-7000
rdkullgren@varnumlaw.com

Clara DeMatteis Mager
Butzel Long PC
150 W. Jefferson
Detroit, MI 48226
Telephone: (313) 225-7077
Fax: (313) 225-7080
mager@butzel.com

J. David Reck
Miller, Canfield, Paddock & Stone
121 S. Barnard, #7
Howell, MI 48843
Telephone: (517) 546-7600
Fax: (517) 546-6974
reck@millercanfield.com

Susan Waun de Restrepo
General Motors Corp.
PO Box 300
MC 482-C14-B16
Detroit, MI 48265-3000
Telephone: (313) 665-3967
Fax: (313) 665-4121
susan.waun@gm.com

Logan G. Robinson
Vice President and General Counsel
Delphi Automotive Systems
MC 483-400-603
5725 Delphi Drive
Troy, MI 48098-2815
Telephone: (248) 813-2537
Fax: (248) 813-2491
logan.robinson@dephi.com

Timothy F. Stock
2200 Wilson Blvd #102-255
Arlington, VA 22201-3324
Telephone: (703) 524-2960
Fax: (707) 897-2537
timlecia2@aol.com

Bruce C. Thelen
Dickinson Wright PLLC
One Detroit Center
500 Woodward Ave #4000
Detroit, MI 48226-3425
Telephone: (313) 223-3500
Fax: (313) 223-3598
bthelen@dickinson-wright.com

Anthony P. Thrubis
General Motors – Legal Staff
300 Renaissance Center
MC 482-C24-D24
Detroit, MI 48265-3000
Telephone: (313) 665-4768
Fax: (313) 665-4896
anthony.p.thrubis@gm.com

Thomas R. Williams
Kerr, Russell and Weber, PLC
One Detroit Center
500 Woodward Ave #2500
Detroit, MI 48226-3406
Telephone: (313) 961-0200
Fax: (313) 961-0388
trw@krwplc.com

Donald E. Wilson
Deloitte & Touche
600 Renaissance Center #900
Detroit, MI 48243-1704
Telephone: (313) 396-3260
Fax: (313) 396-3595
dowilson@dttus.com

Letter from the Chair

Dear Members and Colleagues:

Greetings to you on this fine spring day.

The Section's winter meeting was held at the law offices of Berry Moorman PC in Detroit during week of the North American International Auto Show. Robert Rothman, General Motors Chief Privacy Officer was the featured speaker on the topic of *International Data Privacy Legislation.*

The Section issued a call for papers for the 2005 International Law Student Essay Contest on the topic of the *Applicability of the Geneva Conventions to Persons Viewed as Terrorists*. Howard B. Hill is the able chair of this effort. The essays will be judged by Professor Steven Ratner of the University of Michigan Law School faculty and Professor Gregory Fox of the Wayne Law School faculty. The Section will award two scholarships, one for $1,000 and one for $750, at the Section's Annual meeting in the Fall 2005. Also, the winning articles will be published in the *Michigan International Lawyer:* Winter Edition.

Section members responded to the requests for support from Wayne State and University of Windsor law faculties and participated in the Jessup Moot Court and Niagra International Moot Court competitions. The Section will continue to hold meetings at law schools around the state, expand the student essay contest, invite law students to join as student members, and participate in law school events like these to expose the students to the international practice of law.

The Section's spring meeting was held at the University of Detroit Law School. It was well attended by a very diverse group of members and law students. Stuart Deming made a very informative presentation on the US Foreign Corrupt Practices Act and, in particular, how its accounting and record keeping provisions lie at the core of the developments with Sarbanes-Oxley.

The tradition of this fine publication *Michigan International Lawyer* continues with the support of section members submitting excellent articles. It is distributed in hard copy and on the State Bar of Michigan website. Please consider sharing your expertise and experience with the rest of the section by submitting an article for publication.

Upcoming section events include a strategic planning session June 14, 2005 at The Detroit Athletic Club, and a tour of the US Department of Homeland Security facilities at Wayne County Metropolitan Airport.

The International Law Section Annual Meeting will be held at the Sheraton Hotel in Novi, Michigan on October 6, 2005 starting at 2pm. A program on the topic Business and Legal Challenges in China and India for Automotive Suppliers will follow the business meeting. If you have not been able to participate in the quarterly council meetings, this is an excellent opportunity to meet your section's leadership and members – please plan to join us.

Sincerely,

Randolph M. Wright
Chair

Treasurer's Report

State Bar of Michigan **International Law Section 04/13/05**

For the Six Months Ending March 31, 2005

	Current Activity March	Year To Date March
Income:		
International Law Section Dues	(30.00)	12,630.00
International Stud/Affil Dues	15.00	85.00
Total Income	(15.00)	12,715.00
Expenses:		
ListServ	25.00	150.00
Meetings		175.85
Annual Meeting Expenses		918.81
Newsletter		1,366.12
Printing		99.72
Postage		5.11
Miscellaneous		738.21
Total Expenses	25.00	3,453.82
Net Income	(40.00)	9,261.18
Beginning Fund Balance:		
Fund Bal-International Law Sec		26,674.28
Total Beginning Fund Balance		26,674.28
Ending Fund Balance	(40.00)	35,935.46

Michigan International Lawyer is now available online at www.michbar.org/international

We recognize that not all our members have the ability to access the Journal online. If you cannot access the Journal online, we'd like to hear from you. Please take the time to fill out the form to ensure that you will continue to receive

☐ Yes! I would like to continue to receive the Michigan International Lawyer by mail. Please mail to the address below:

Name: _____

Address: _____

_____

City: _____

State: _____

Zip: _____

Please send to:
Professor John E. Mogk, Editor
Michigan International Lawyer
Wayne State University Law School
471 W. Palmer
Detroit, MI 48202

Michigan International Lawyer
State Bar of Michigan
Michael Franck Building
306 Townsend Street
Lansing, MI 48933-2083