

New York International Chapter News

A publication of the International Section of the New York State Bar Association

Message from the Past Chair



Andre R. Jaglom

As I write this in early June, having just handed over the reins of the International Section to the capable hands of Andrew Otis, I can't help but reflect on what a remarkable year this has been. The Section's scope of activities and issues is breathtakingly broad, and it has been both a privilege and an education to lead the extraordinary team of volunteers that make up the International

Section, from the senior officers to our chapter chairs around the world to the committee chairs and members, without all of whom we could not do all that we do.

Perhaps the most visible of our activities are our major meetings. This year we had three, rather than our usual two. First, in September, was our annual Seasonal Meeting in Panama, where we drew nearly 200 lawyers

(continued on page 2)

Message from the Chair



Andrew D. Otis

As I write this, on the plane back from the very successful seasonal meeting in Lisbon, Portugal, I am reminded again of the key to our Section's success: relationships. We renewed old friendships in Lisbon and made new friends and contacts that I hope will join our Section family.

It has been an eventful four months since I became Section Chair on June 1, 2012. In that time, we have increased our membership, strengthened and expanded our role as a non-governmental organization in the United Nations Commission on International Trade Law ("UNCITRAL"), and developed a full slate of interesting programs for the upcoming 12 months.

(continued on page 4)

Inside

Anti-Corruption and Bribery Compliance:
U.S., UK, EU, Prague: How Does It All Fit Together?
The UK Perspective 5
(Jonathan P. Armstrong)

The Revised Swiss Rules of International Arbitration 11

Spotlight on the New York Convention on the Recognition
and Enforcement of Foreign Arbitral Awards 13

New ICC Arbitration Rules for Today's Business
Now in Force 18

Perspectives on Three Recent Annulment Decisions from Spain:
Is Where You Stand Determined by Where You Sit? 20
(Clifford J. Hendel)

Mediation Law in Spain:
An Overview of the Spanish Mediation Act 24
(Maribel (María-Isabel) Rodríguez Vargas)

Sedona Conference Issues International
Data Protection Principles 26
(Steven C. Bennett)

**Cocktail Reception in Honour of the 56th Session of the
UNCITRAL Working Group II**
Remarks by Patricia O'Brien 27
Summary of Remarks by Hon. Judith S. Kaye 28
Note of Thanks by Salim Moollan 29

Section News
The Role of the Lawyer in Microfinance Event 30
Section Diversity Challenge 30



A Message from the Past Chair

(Continued from page 1)

from 29 countries—14 in Latin America, 14 in other parts of the world, and 10 U.S. states. Reviews of the 30 CLE panels and plenaries were glowing, and the social events, particularly the gala dinner at the Miraflores locks on the Panama Canal, were superb. The Steering Committee, led by Alvaro Aguilar and Juan Pardini in Panama and Alyssa Grikscheit in New York, did a terrific job. Preceding the Panama meeting we held a successful one-day meeting with our Costa Rica Chapter, including lunch with the Costa Rica Bar Association, an evening CLE and a reception. Most of Costa Rica's leading international lawyers participated. Kudos to Hernan Pacheco for organizing that meeting, which will be a model for future pre-meetings at our Seasonal Meetings.

Our Annual Meeting program in January was among the best attended in years, thanks to a fascinating program proposed by Jack Zulack and organized by his partner, Megan Davis, and Jerry Ferguson on "The Madoff Fraud: A Ground-Breaking Case in Cross-Border, International Litigation." At our luncheon we presented our Annual Award for Distinction in International Law and Affairs to Dr. Peter Ackerman, the Founding Chair of the International Center on Nonviolent Conflict, who gave a fascinating presentation on the success of non-violent revolutions and his Center's work in promoting such movements.

Finally, in late March, the Section organized the Ontario-New York Legal Summit in conjunction with the Ontario Bar Association. Held at the request of NYSBA President Vincent Doyle just prior to the House of Delegates meeting in Buffalo, the Summit presented 18 CLE programs on U.S.-Canada cross-border issues on consecutive days in Toronto and Buffalo. Headlined by Chief Justice Warren K. Winkler of the Court of Appeals for Ontario and Chief Judge Jonathan Lippman of the New York Court of Appeals, the program rivaled a Seasonal Meeting in scope and quality. Quite frankly, when Founding Section Chair Lauren Rachlin, whose inspiration and efforts made the program the great success that it was, told me the breadth of his plans, I thought he had lost his mind. But he and his fellow Program Chairs, Wayne Gray and Neil Quartaro, pulled it off magnificently.

In addition, we held a terrific one-day educational program in Prague together with the Czech Bar Association, with roughly 60 participants attending three panels, a reception and dinner, all wonderfully organized by our Czech Republic Chapter Co-Chairs Andrea Carska-Sheppard and Jiri Hornik. And to cap our especially busy March and April, we put on our annual one-day Fundamentals of International Law Practice as Tuesday's "boot camp" program at the ABA Section of International

Law's Annual Meeting in New York in April, organized by Matt Kalinowski and Enrique Liberman, and sponsored a reception and two panels at the meeting.

Not only was our meeting schedule full, informative and educational, it was financially successful as well, with the Panama Seasonal Meeting and the New York-Ontario Legal Summit both raising funds to replenish our Section fund balance that had been depleted in recent years.

In addition to the meetings, our Chapters and Committees were very active with a variety of seminars, meetings and other activities, and we have made some progress toward coordinating the Chapters and the Committees more than in the past. Our Committee on International Contract and Commercial Law was especially active, led by Albert Bloomsbury. In addition to developing a contract checklist project as a resource for cross-border practitioners, this Committee and Albert led our UNCITRAL activities, which included active participation in last year's Plenary Session in Vienna and Working Group meeting last year in Vienna and this year in New York. We became active advocates for UNCITRAL maintaining its system of alternating meetings in New York and Vienna in the face of budget-cutting proposals that would have limited all meetings to Vienna, and our efforts to coordinate New York and federal officials as well as our own advocacy were credited by both UN and UNCITRAL officials as critical to the success of that campaign. During the New York sessions we held a highly successful reception for delegates, hosted by Steve Younger and the Patterson Belknap firm and attended by 120 guests from 35 countries, including UN Under-Secretary-General for Legal Affairs Patricia O'Brien, UNCITRAL Chairman Salim Moollan and UNCITRAL Secretary Renaud Sorieul, as well as former Chief Judge of the New York Court of Appeals Judith Kaye. John Hanna and Mike Galligan, as well as the many NYSBA delegates, in addition to Albert, were key participants in our UNCITRAL efforts. Special thanks also go to Otto Waechter, our Austria Chapter Chair, for being our man on the ground in Vienna.

We were also active participants in the U.S. State Department Office of Private International Law's Advisory Committee on the Hague Choice of Court's Convention and proposed implementing legislation and submitted several papers in support of the ratification effort and improved federal legislation. Our delegation consisted of Albert, John, Mike, Thomas Pieper, Jay Safer and me. We have also proposed that NYSBA make ratification one of its federal legislative priorities.

One of our newest Committees, the Committee on International Microfinance and Financial Inclusion, led by

Azish Filabi and Julee Milham, had a successful kick-off event that gathered a large group for a seminar presentation and also submitted comments to UNCITRAL urging its adoption of microfinance as a Working Group topic.

The Section also submitted comments on pending legislation that would have retroactively impaired a foreign sovereign's ability to assert a merger doctrine defense in judgment collection proceedings and would have changed the rules of the game in pending litigation involving the Republic of Argentina. That proposal was ultimately withdrawn in the face of the Section's opposition and that of others, but has recently reappeared in a more general form not limited to foreign sovereigns but equally objectionable on rule of law and other policy grounds, so the Section has again prepared an opposing memorandum. Mark Rosenberg has led these efforts.

The Section has also maintained the high quality of its three publications, the *International Law Practicum*, the *New York International Chapter News* and the *New York International Law Review*, thanks to the efforts of our publications team, including David Detjen, Thomas Backen, Dunniela Kaufman, Lester Nelson and Chryssa Valletta.

This is by no means an exhaustive list of the Section's activities over the past year. It is enough of a sampling to make clear that the Section's accomplishments are the work of a large team and not of the Section's Chair, or even its senior officers. But I cannot end without express-

ing my great appreciation for the extraordinary help and support of my immediate predecessors, Carl-Olof Bouveng and Michael Galligan, who were unstinting in providing their time, efforts and sound advice. Without their assistance, we would not have had the successful year we have had. The same is true of Andrew Otis, our new Chair; Glenn Fox, our Chair-elect; Larry Shoenthal, our long-time Treasurer; as well as Thomas Pieper and Neil Quartaro who round out the senior officer team from the past year.

Perhaps most important, we accomplished the difficult transition after the retirement of Linda Castilla, the NYSBA's extraordinary staff liaison to the Section since its founding. While Linda is in many ways irreplaceable, and was critical to our success over the last quarter century, her successor, Tiffany Bardwell, has made the transition far smoother than we had any right to expect. I am grateful for her diligence and dedication, which made a change I very much feared become smooth sailing for me and for the Section.

It has been a pleasure and a privilege to serve as the Section's Chair for the past year and to help advance all of its wide range of activities. Many thanks to everyone who participated in making it as good a year as it was. I am looking forward to seeing where Andrew takes us next.

Andre R. Jaglom