INSIDE:

INTERNATIONAL & COMPARATIVE LAW at DUKE LAW

Spring 2009

Laurence R. Helfer

Prominent international law scholar joins faculty

SCHOLARSHIP EXPLORES RECIPES FOR INTERNATIONAL INSTITUTIONS TO SUCCEED

TO UNDERSTAND how an international institution operates, says Laurence R. Helfer, "you need to talk to the people who work within it and to the public and private actors who make use of the institution."

Helfer, a leading scholar of interdisciplinary approaches to international law, human rights, and international intellectual property who joins the Duke Law faculty in July 2009, has done just that with his latest project — an exploration of the Andean Tribunal of Justice (ATJ). The ATJ is a little-known international court created by the Andean Community, South America's second largest trading block, whose members include Bolivia, Ecuador, Peru, Colombia, and, until 2006, Venezuela. Helfer's study of more than 1,400 ATJ rulings has yielded new insights into how international institutions, including courts, operate when transplanted from one region to another and how they can contribute to developing the rule of law in areas where it is weak.

WITHIN THE IP AREA, HELFER CONCLUDES, THE ANDEAN TRIBUNAL OF JUSTICE HAS HELPED TO CREATE A "RULE OF LAW ISLAND" IN THE ANDEAN COMMUNITY: THE TRIBUNAL'S DECISIONS ARE WIDELY RESPECTED AND FOLLOWED BY ADMINISTRATIVE AGENCIES AND COURTS IN THE COMMUNITY'S MEMBER STATES.

As with the more widely studied European Court of Justice on which it was modeled, the ATJ has jurisdiction over a wide variety of issues, including trade, taxes, tariffs, and intellectual property (IP). But unlike its European cousin, the ATJ's docket is dominated by IP disputes. Within the IP area, Helfer concludes, the ATJ has helped to create a "rule of law island" in the Andean Community: the tribunal's decisions are widely respected and followed by administrative agencies and courts in the Community's member states.

Helfer, currently a professor of law and director of the International Legal Studies Program at Vanderbilt Law School, undertook a series of research trips to the region with Northwestern University political scientists Karen J. Alter and M. Florencia Guerzovich. They interviewed judges, government officials, administrative agency officials, attorneys, and private actors who participate in ATJ litigation. Their findings are being published in a series of papers. The first, "Islands of Effective International

HELFER *(continued)*

Adjudication: Constructing an Intellectual Property Rule of Law in the Andean Community," was the lead article in the January 2009 issue of the *American Journal of International Law*.

According to Helfer, the ATJ's effectiveness is attributable in part to the domestic administrative agencies that apply Andean IP law when reviewing applications to register patents and trademarks. These agencies, created in the 1990s with the support of international financial institutions such as the International Monetary Fund and the World Bank, are led and staffed by attorneys and other professionals committed to the fair and evenhanded application of legal rules. Several of the agencies operate outside of national civil service systems and have independent revenue streams, resulting in greater operational autonomy.

> **"FOR AN INTERNATIONAL INSTITUTION TO FUNCTION effectively in countries where the rule of law is weak, it needs to build a relationship with actors in the government who have a professional stake in seeing that international rules and decisions are followed."**
> **– Laurence R. Helfer**

All of these factors have combined to create an enclave of respect for the rule of law, Helfer says. "The agencies have developed a relationship with the ATJ whereby the court clarifies Andean IP standards for them, but also strengthens their fidelity to the rule of law by requiring them to follow fair and transparent procedures." In this way, he adds, the ATJ has bolstered the autonomy and independence of the agencies relative to other government actors.

In an era in which the number of international institutions and tribunals is expanding, Helfer's close examination of the ATJ and the Andean Community legal system offers several broader insights for scholars and policymakers. One involves how successful institutions from one region operate when transplanted to another. "We show," says Helfer, "that for an international institution to function effectively in countries where the rule of law is weak, it needs to build a relationship with actors in the government who have a professional stake in seeing that international rules and decisions are followed."

Helfer's empirical study of the ATJ represents the latest evolution in an ambitious research agenda that includes international intellectual property and human rights, two subjects he will teach at Duke Law. He has explored the growing interface between the two in numerous articles and a forthcoming book. He also is a co-author of the fully updated casebook *Human Rights* (2d edition, Foundation Press, 2009).

Helfer will introduce the casebook at Duke when he teaches International Protection of Human Rights next spring. An enthusiastic teacher of rapidly-evolving, topical subjects, Helfer says he regularly identifies current events and real-world problems for students to analyze in the classroom. Students also assist him with his many research projects.

Nominated by the Duke University provost to fill the Harry R. Chadwick Sr. chair when he joins the faculty, Helfer also will serve as co-director, with Professor Curtis Bradley, of the Center for International and Comparative Law (CICL). Helfer looks forward to continuing established CICL programs such as the Global Law Workshop and to introducing a series of interdisciplinary roundtables that will bring together small groups of scholars in related fields for intensive workshops on draft papers. As an incoming board member of Duke's John Hope Franklin Institute for the Humanities, Helfer also looks forward to introducing social science and humanities scholars at Duke to the Law School's highly interdisciplinary faculty.

"Professor Helfer is a tremendous addition to our faculty," says Dean David F. Levi, adding that Helfer's broad range of research interests complements and strengthens the Law School's programs in international law, intellectual property, and human rights. "He is a creative and forceful institution builder who will help unify many parts of the university that are interested in human rights and interdisciplinary research. We are delighted to welcome him to Duke Law." – *Frances Presma*

SELECTED FACULTY SCHOLARSHIP

Curtis A. Bradley

Self-Execution and Treaty Duality, Supreme Court Review (forthcoming 2009)

FOREIGN RELATIONS LAW: CASES AND MATERIALS (Aspen Publishers, 1st ed. 2003, 2d ed. 2006, 3d ed. 2009) (with Jack L. Goldsmith)

PRESIDENTIAL POWER STORIES (Foundation Press 2009) (Co-Editor with Christopher H. Schroeder)

Symposium: The Law and Politics of International Delegation, 71 Law & Contemporary Problems (Winter 2008) (Special Editor with Judith G. Kelley)

Introduction: The Story of Presidential Power, in PRESIDENTIAL POWER STORIES 1-20 (Christopher H. Schroeder & Curtis A. Bradley eds., 2009) (with Christopher H. Schroeder)

The Story of Ex parte Milligan: Military Trials, Enemy Combatants, and Congressional Authorization, in PRESIDENTIAL POWER STORIES 93-132 (Christopher H. Schroeder & Curtis A. Bradley eds., 2009)

Intent, Presumptions, and Non-Self-Executing Treaties, 102 American Journal of International Law 540-551 (2008)

Terror and the Law: The Limits of Judicial Reasoning in the Post-9/11 World, 87 Foreign Affairs 132-137 (July/August 2008)

The Concept of International Delegation, 71 Law & Contemporary Problems 1-36 (Winter 2008) (with Judith G. Kelley)

Paul D. Carrington

Civil Procedure to Enforce Transnational Rights, Proceedings of 2006 Conference on Civil Procedure Code, University of Ghent (forthcoming)

James D. Cox

Financial Regulation in a Global Market Place: Report of the Duke Global Capital Markets Roundtable, 18 Duke Journal of Comparative & International Law 239-252 (2008)

Deborah A. DeMott

The Restatement (Third) of Agency and the Unauthorised Agent in US Law, in THE UNAUTHORISED AGENT: PERSPECTIVES FROM EUROPEAN AND COMPARATIVE LAW 219-244 (Danny Busch & Laura J. Macgregor eds., Cambridge University Press 2009)

Guests at the Table?: Independent Directors in Family-Influenced Public Companies, 33 Journal of Corporation Law 819-863 (2008) reprinted in 50 Corporate Practice Commentator 855 (2009)

Gaurang Mitu Gulati

Symposium: Odious Debts and State Corruption, 70 Law & Contemporary Problems (Summer 2007) (Special Editor with David A. Skeel, Jr.)

A Convenient Untruth: Fact and Fantasy in the Doctrine of Odious Debts, 48 Virginia Journal of International Law 595-639 (2008) (with Sarah Ludington)

Odious Debts and Nation-Building: When the Incubus Departs, 60 Maine Law Review 477-485 (2008) (with Lee C. Buchheit)

Donald L. Horowitz

'The Federalist' Abroad in the World, to accompany a new edition of The Federalist (Ian Shapiro ed., Yale University Press, forthcoming 2009)

Conciliatory Institutions and Constitutional Process in Post-Conflict States, 49 William & Mary Law Review 1213-1248 (2008)

Francis McGovern

Dispute Systems Design: The United Nations Compensation Commission, Harvard Negotiation Law Review (forthcoming 2009)

Ralf Michaels

Entries, *Acquisition from a Non-Owner*, *Comparative Law*, *Legal Culture*, *Ownership*, *Restatements*, in Handbook of European Private Law (Jürgen Basedow, Klaus Hopt & Reinhard Zimmermann eds., Oxford University Press, forthcoming)

Entries, *Eigentum*, *Gutgläubiger Erwerb*, *Rechtsvergleichung*, *Rechtskultur*, in Handworterbüch des Europäischen Privatrechts (Jürgen Basedow, Klaus Hopt & Reinhard Zimmermann eds., Mohr/Siebeck, forthcoming)

Global Legal Pluralism, 5 Annual Review of Law & Social Science (forthcoming 2009)

Recognition and Enforcement of Foreign Judgments, in Max Planck Encyclopedia of Public International Law (Rüdiger Wolfrum ed., forthcoming)

Beyond the State: Rethinking Private Law (editor with Nils Jansen) (Mohr/Siebeck, 2008)

Beyond the State? Rethinking Private Law, 56 American Journal of Comparative Law (Summer 2008) (Special Editor with Nils Jansen)

Transdisciplinary Conflicts, 71 Law & Contemporary Problems (Summer 2008) (Special Editor with Karen Knop & Annelise Riles)

Preamble I: Purposes, legal nature, and scope of the PICC; Applicability by courts; Use of the PICC for the purpose of interpretation and supplementation and as a model, in Commentary on the UNIDROIT Principles of International Commercial Contracts 21-80 (Stefan Vogenauer & Jan Kleinheisterkamp eds., Oxford University Press 2009)

Economics of Law as Choice of Law, 71 Law & Contemporary Problems 73-104 (Summer 2008)

Foreword: Transdisciplinary Conflicts, 71 Law & Contemporary Problems 1-17 (Summer 2008) (with Karen Knop & Anelise Riles)

Madeline Morris

Counterterrorism Detention, Harvard Journal of Law & Public Policy (forthcoming 2009)

New War, New Law: The International Law of New Forms of Warfare, Harvard International Law Journal (forthcoming 2009)

Terror and Integrity: Preventive Detention in the Age of Jihad (Oxford University Press, forthcoming 2009)

The Status of Combatants, Wayne Law Review (forthcoming) (Edward M. Wise Memorial Symposium)

Taking Liberties: The Personal Jurisdiction of Military Commissions, Duke Law School Public Law & Legal Theory Series, Paper No. 215 (with others)

Arti K. Rai

Intellectual Property and Alternatives: Strategies for Green Innovation (forthcoming working paper commissioned by Chatham House) (with Richard Newell, Jerome Reichman, & Jonathan Wiener)

Is Bayh-Dole Good for Developing Countries? Lessons from the U.S. Experience, 6 PLoS Biology 2078-2084 (October 2008) (with others)

Jerome H. Reichman

Intellectual Property and Alternatives: Strategies for Green Innovation (forthcoming working paper commissioned by Chatham House) (with Richard Newell, Arti K. Rai, & Jonathan B. Wiener)

Identifying and Addressing Global Trends to Restrict Access to Scientific Data from Government Funded Research, in The Global Flow of Information (Jack M. Balkin & Eddan Katz eds., Yale University Press forthcoming) (with Paul F. Uhlir)

Is Bayh-Dole Good for Developing Countries? Lessons from the U.S. Experience, 6 PLoS Biology 2078-2084 (October 2008) (with others)

William A. Reppy Jr.

Eclecticism in Methods for Resolving Tort and Contract Conflict of Laws: The United States and the European Union, 82 Tulane Law Review 2053 (2008)

Barak D. Richman

Ethnic Networks, Extralegal Certainty, and Globalisation: Peering Into the Diamond Industry, in Contractual Certainty in International Trade: Empirical Studies and Theoretical Debates on Institutional Support for Global Economic Exchanges 31-49 (Volkmar Gessner ed., Hart Publishing 2009)

Lessons from India in Organizational Innovation: A Tale of Two Heart Hospitals, 27 Health Affairs (Sept./Oct. 2008) 1260-1270 (with Krisna Udayakumar, Will Mitchell & Kevin A. Schulman)

James Salzman

Cross-Cutting Issues in the Sectoral Case Studies, in Economic Growth and Environmental Regulation: China's Path to a Brighter Future (Tim Swanson & Tun Lin eds., Routledge forthcoming September 2009)

International Environmental Law and Policy (Foundation Press 1998, 2d ed. 2002, 3d ed. 2007) (with Durwood Zaelke & David Hunter)

Ecosystem Services in Decision Making: Time to Deliver, 7 Frontiers in Ecology and the Environment 21-28 (February 2009) (with Gretchen C. Daily et al.)

The Importance of Population Stabilization to Sustainability, in Agenda for Sustainable America (John Dernbach ed., Island Press 2009) (with Anne Ehrlich)

Corn Futures: Consumer Politics, Health, and Climate Change, 38 Environmental Law Reporter 10851 (2008) (with Jedediah Purdy)

Is It Safe to Drink the Water?, 19 Duke Environmental Law & Policy Forum 1-42 (2008)

Steven L. Schwarcz

Regulating Complexity in Financial Markets, 87 Washington University Law Review (forthcoming 2009)

The 'Principles' Paradox, 9 European Business Organization Law Review (forthcoming 2009)

The Case for a Market Liquidity Provider of Last Resort, NYU Journal of Law & Business (forthcoming 2009) (Keynote address, Modernizing Financial Regulatory Structure Symposium)

The Future of Securitization, 41 Connecticut Law Review (forthcoming 2009)

Systemic Risk, 97 Georgetown Law Journal 193-249 (2008)

Neil S. Siegel

International Delegations and the Values of Federalism, 71 Law & Contemporary Problems 93-113 (Winter 2008)

Scott L. Silliman

Book Review, 95 Duke Magazine (March/April 2009) (reviewing Michael A. Newton & Michael P. Scharf, Enemy of the State: The Trial and Execution of Saddam Hussein (2008))

Michael E. Tigar

The Reichstag Fire Trial, 1933-2008: The Production of Law and History, 60 Monthly Review 24-49 (March 2009) (with John Mage)

Noah Weisbord

Prosecuting Aggression, 49 Harvard International Law Journal 161-220 (2008)

Jonathan B. Wiener

Radiative Forcing: Climate Policy to Break the Logjam in Environmental Law (Nicholas Institute Working Paper No. 08-04, November 2008), NYU Environmental Law Journal (forthcoming)

The Reality of Precaution: Comparing Risk Regulation in the U.S. and Europe (forthcoming) (with James K. Hammitt, Michael D. Rogers & Peter H. Sand)

Intellectual Property and Alternatives: Strategies for Green Innovation (forthcoming working paper commissioned by Chatham House) (with Richard Newell, Arti K. Rai, & Jerome H. Reichman)

Climate Change Policy, and Policy Change in China, 55 UCLA Law Review 1805-1826 (2008)

Curtis A. Bradley

Lawmakers should guide treaty enforceability in U.S. courts

HAVING LONG FOCUSED his scholarship at the intersection of international and domestic law, Professor Curtis Bradley's latest project steps into a long-running legal debate on the issue of treaty self-execution, one that has been reinvigorated, he says, by the Supreme Court's 2008 ruling in *Medellin v. Texas*.

In "Self-Execution and Treaty Duality," forthcoming in the *Supreme Court Review*, Bradley argues that the Supremacy Clause of the Constitution, which states that treaties made by the U.S. are part of "the supreme Law of the Land," is not detailed enough to function as a guide to treaty enforceability in U.S. courts.

"Part of it depends on how you read the constitutional text," explains Bradley, the Richard A. Horvitz Professor of Law and Professor of Public Policy Studies and senior associate dean for Academic Affairs. "Most notably, the Constitution says that treaties are the supreme law of the land. Some people think that means that the Constitution requires treaties to be enforceable automatically in court. Others think — and my view is — that the Supremacy Clause doesn't really tell us very much about the extent to which treaties can be invoked in court. It just gives the national government the ability to cause treaties to be preemptive federal law."

Bradley says that the treaty-makers — the president and Senate, and, in some cases, Congress — determine whether or not a treaty is self-executing, or automatically enforceable in U.S. courts.

"I think there is a greater role for Congress to play than there might have been in the early days of U.S. treaties, so I'm generally an advocate of congressional involvement in implementing treaties," he says. "But I still recognize that there are some areas of treaties that can be enforced automatically."

The views he outlined in his new article dovetail with the Supreme Court's *Medellin* opinion, Bradley notes. In its 6–3 ruling, the Court said that a 2004 International Court of Justice (ICJ) decision requiring U.S. courts to review the convictions of Jose Medellin and 50 other Mexican nationals on death row in the U.S. does not override state law in the absence of an implementing statute enacted by Congress.

"In its *Medellin* opinion, the Supreme Court said more than it ever had on this topic in its history," he said. "It's a controversial ruling. A lot of people are debating both its implications and whether or not it is a sensible decision." Bradley thinks it is. "The majority still sees some role for self-executing treaties, but says Congress needs to be involved with many treaties."

His new article is a continuation of earlier scholarship on such issues as the status of customary international law in U.S. courts, including human rights norms, and the relationship of treaties to other forms of U.S. law. Bradley is currently working on a book about international law in the U.S. legal system, to be published in fall 2009 by Oxford University Press.

Having served as counselor on international law in the Legal Adviser's Office of the U.S. State Department in 2004 and subsequently as a member of the Secretary of State's Advisory Committee on International Law, Bradley also recently served on a joint American Bar Association/American Society of International Law task force on treaties in U.S. law. The task force issued a series of recommendations regarding the *Medellin* decision.

"We propose that the Senate be clearer when it gives advice and consent to treaties, regarding what its position is on this topic and whether it wants the treaty to be self-executing," he says. "Often the Senate has not been very clear about that, and we urge them to be more specific. My guess is that courts will defer to the Senate's views concerning treaty self-execution. The report also suggests possible framework legislation, giving the president authority to implement non-self-executing treaties." ❦

– *Forrest Norman*

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> **ONCE THE GOVERNMENT STARTS TO CONTRIBUTE TO THE COSTS OF CLINICAL TRIALS** for medicines with high disease burdens, their prices have to come down. The bulk of their downstream development costs is these clinical trial costs, and now the companies can't hide behind that."
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> – Jerome H. Reichman

Jerome H. Reichman

Treat clinical trials as global public good

IF GOVERNMENTS HELP PAY for clinical trials of medicines to treat or prevent widespread diseases, everyone would benefit, says Jerome Reichman, Duke's Bunyan S. Womble Professor of Law.

Reichman makes the case for government control of the clinical trial process, among other innovations, in two new scholarly works, "Rethinking the Role of Clinical Trial Data in International Intellectual Property Law: The Case for a Public Goods Approach," in the forthcoming issue of the *Marquette Intellectual Property Law Review,* and "Comment: A Trilogy of Views About Compulsory Licensing of Patented Pharaceutical Inventions," forthcoming in the *Journal of Law, Medicine and Ethics.*

"The question of what to do with clinical trials is a burning question, even in developed countries," says Reichman, a leading expert on the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS agreement).

Although pharmaceutical companies receive some government funding for drug development, they shoulder the primary burden for costly clinical trials. Because of their potential for widespread benefit, trials of successful drugs to treat illnesses with "high disease burdens," such as antiretrovirals to treat HIV/AIDS, should be seen as public goods, Reichman argues. A logical outgrowth of that approach would be for taxpayers to reimburse companies for expenses incurred for clinical trials of successful drugs.

The U.S. should take the lead by establishing a tiered system of government reimbursement for clinical trials, he says, with reimbursement based on success.

"You would get most of your money back if you succeeded in the third round [of trials] of a medicine of public interest," he says, adding that the cost of trials for "lifestyle drugs" such as Viagra, should still be primarily borne by the pharmaceutical companies. "Once the government starts to contribute to the costs of clinical trials for medicines with high disease burdens, their prices have to come down. The bulk of their downstream development costs is these clinical trial costs, and now the companies can't hide behind that."

If the U.S. were to adopt such a regime, it would have leverage to apply it worldwide, Reichman says.

"If you make this a public good domestically, the U.S. can say to other countries, 'OK, let's collaborate. Every country should pay for these clinical trials according to their rank, as poor, middle, or high income. We'll divvy up the cost, everybody gets the results, and their generic industries can come online when the patent expires.'"

Free-trade agreements that limit intellectual property rights in developing countries, particularly with regard to pharmaceuticals, pose a major obstacle to access to medicines for people in poor countries.

"Why developing countries at all economic levels have succumbed to the one-sided, virtually nonnegotiable intellectual property provisions that [the Office of the United States Trade Representative] has imposed upon them in the various [free trade agreements] remains unclear," Reichman writes in "Rethinking the Role of Clinical Trial Data in International Intellectual Property Law."

"Have they made the right calculus or not? They are being paid in other forms of compensation, lower tariffs, more imports for agricultural and textiles," Reichman says. "But I can tell you horror stories about people who can't cross a border to get affordable AIDS medication, and they die. These are not fairy stories. People die."

Reichman believes the changes he has proposed will make safe medicine more affordable everywhere.

"Fiscalize the cost of clinical trials as a global public good," he says. "Every country pays its fair share, everybody gets the results. That will drive down the cost of medicines enormously, everywhere."

– *Forrest Norman*

DOING BUSINESS IN LATIN AMERICA

Visiting Professor of the Practice Bill Brown '80 discusses the origins of the global financial crisis during the "Doing Business in Latin America" symposium, a two-day conference organized by the Latin American Student Association at Duke's Fuqua School of Business and the Law School's Latin American Business Law Association.

LOCAL PROPERTY, GLOBAL JUSTICE

A JANUARY SYMPOSIUM examined the role of regulation in addressing global environmental problems and the implications of property-based solutions.

"We are currently suffering a tragedy of the climate commons," explained Jonathan Wiener, Duke's Perkins Professor of Law, Professor of Environmental Policy, and Professor of Public Policy Studies. "Emissions [of greenhouse gasses] anywhere on the planet mix globally in the atmosphere and cause global impacts, although those impacts vary regionally and locally. The abatement of those emissions is costly to the actors who would undertake that abatement, so there is an incentive to continue emitting and let those emissions cause harm to others.

"The fundamental question, as in any tragedy of open-access resource problem, is how to restrict access," Wiener added. He suggested that a cap-and-trade regulatory system would likely entice more countries to join an international agreement than would a tax on emissions. "The real issue, the real distinction, between taxes and cap and trade ... is engaging political participation by the actors who would have to adopt and implement this regulatory system."

Panelist **Annie Petsonk**, international counsel with the Environmental Defense Fund, said that the World Trade Organization (WTO) could provide a suitable structure for a binding international agreement on greenhouse gas emissions.

"Countries are pounding on the doors of the WTO to get in," she said. "Why? Because, in exchange for accepting a set of international responsibilities ... they gain access to markets. That's what countries want, that's what their people want."

Experts from the United States, Brazil, and Nigeria took part in the symposium sponsored by the Center for International and Comparative Law and the *Duke Journal of Comparative and International Law*.

REASSESSING NAFTA

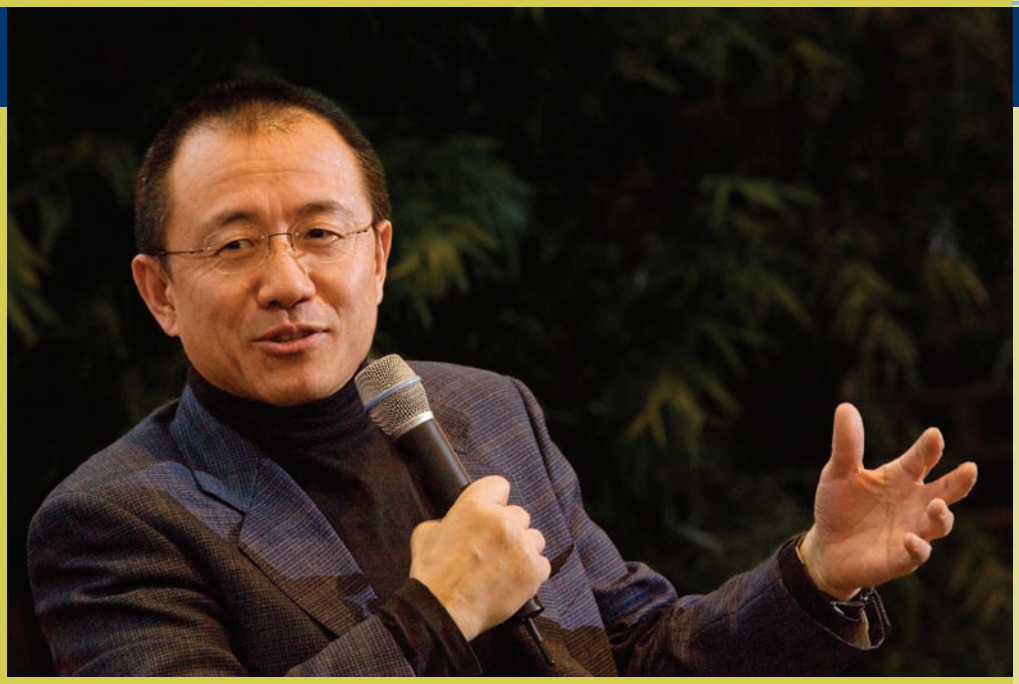
ALMOST FIFTEEN YEARS after the North American Free Trade Agreement (NAFTA) was ratified in the U.S. Senate, its successes and shortcomings were examined during a November panel discussion.

From a Canadian perspective, NAFTA has enhanced trade and allowed a number of North American industries to integrate across borders, said **Professor Debra Steger** of the University of Ottawa, but she called for more work on energy and climate change agreements. "If we don't get our act together on the national level under NAFTA, we're going to have a regulatory nightmare on our hands that we have to unwind."

Mexican Environmental Secretariat official **Alejandro Posadas LLM '95, SJD '03,** an international trade expert and former dean of CIDE Law School in Mexico City, called the alliance an enormous success in its stimulation of trade and investment in Mexico. He pointed to Mexico's development of environmental institutions as one of NAFTA's greatest success stories.

"In 1989, Mexico established, for the first time, a federal environmental agency," he said. "I think Mexico has built very important institutional capacity and expertise on the environmental field — probably one of the strongest of any developing country."

In contrast, **Gary Hufbauer** of the Peterson Institute for Economics joked that in the United States, NAFTA "has created a durable effigy" for people who don't like globalization — and who are great in number. But he argued that it has improved trade flows and has not resulted in the job losses claimed by critics. His organization estimates that NAFTA-related activity brings $60 billion into the U.S. economy each year. The proportionate gains to Mexico and Canada are much larger because of their greater dependence on trade, he added.



GAO XIQING '86 IS VICE CHAIRMAN, PRESIDENT, AND CHIEF INVESTMENT OFFICER OF THE CHINA INVESTMENT CORP., CHINA'S SOVEREIGN-INVESTMENT FUND.

PRIVATE EQUITY, SOVEREIGN FUNDS AND THE GLOBAL CREDIT CRUNCH

THREE LEADING INVESTORS AGREED THAT COORDINATED international efforts to thaw credit markets last fall helped avert total economic meltdown when they took part in a December discussion on the crisis.

"It was the most extraordinary coordinated action that ... I've ever seen in finance," said **Stephen Schwarzman**, chairman and co-founder of New York-based private equity firm the Blackstone Group and a former head of Lehman Brothers' global mergers and acquisitions team. "They basically saved the system."

An aggregate of systemic problems in financial markets, bad business models for investment banks, and an overly optimistic housing strategy were blamed as key sparks for the financial crisis. Leverage is "right at the top" of the many causes, said **John Canning Jr. '69**, chairman and co-founder of Madison Dearborn Partners, a private equity firm in Chicago.

"In 1982, outstanding leverage was 200 percent of GDP," he said. "It went straight up to 365 percent in June. If it takes that long to get back, or if it takes 16 or 18 years, it's going to be a very painful time."

Schwarzman suggested the mark-to-market fair accounting method required by the Securities and Exchange Commission helped exacerbate the crisis. But **Gao Xiqing '86**, vice chairman, president, and chief investment officer of the China Investment Corp., China's sovereign-investment fund, disagreed.

"I have the baggage of being a former regulator and also a former lawyer, and I've been working on securities issues for more than 20 years," Gao said. "In China, we still believe that the United States is the best country to invest in, and for this particular reason: It's a lot more transparent, a lot more predictable. But once you change the rule, like Steve was suggesting, then we would have problems [investing]."

Gao also commented on the changing perception of sovereign wealth funds as the crisis unfolds. "This time last year, we were regarded as being a sinister institution with ulterior motives and people were looking at us with a lot of suspicion, and not only in this country," Gao said. "Now, a year later, we seem to be hearing different stories — but really it's not that different. [Our chairman] said, 'Well, the price is going down further, and we don't want to catch a falling knife.' I said, 'This is what they want us to do. We'll try to catch a falling knife, and if we get cut, people will still love us, but if the market turns up, nobody will want us.'"

CICL EVENTS FUEL BUSY YEAR IN INTERNATIONAL, COMPARATIVE LAW

THE DUKE CENTER for International and Comparative Law (CICL) sponsored numerous events at the Law School during the 2008–09 year, further enhancing the school's extracurricular offerings in those subject areas. In addition to the Global Law Workshop and the Bernstein Lecture (see stories, Page 9), CICL sponsored more than 15 lectures and symposia, including:

- "The Devilish Difficulty of Defending a Detainee"
  Maj. David Frakt, defense counsel to Guantanamo detainee Mohammed Jawad
- "Terror and Consent: The Wars for the Twenty-First Century"
  Philip Bobbitt, University of Texas School of Law
- "The Development of Human Rights: A Reflection on Recent Trends and a Discussion of Emerging Issues"
  Robert Archer, International Council on Human Rights Policy
- "Outsourcing War and Peace"
  Laura Dickinson, Arizona State University School of Law
- "Human Rights: Challenging the Indivisibility Doctrine"
  James Nickel, Arizona State University School of Law
- "Federal Court vs. Military Commissions at Guantanamo Bay: A Trial Lawyer's Perspective"
  Tom Durkin, defense counsel to two Guantanamo detainees, and **Ed MacMahon,** defense counsel to Zacarias Moussaoui
- "What Is Islamic Law?"
  Ebrahim Moosa, Religious Studies and Law, Duke University
- "The International Impact of the U.S. Presidential Election"
  John Dugard, Duke Law; **Donald Horowitz,** Duke Law; **Ebrahim Moosa,** Duke University; **Christiane Lemke,** UNC-Chapel Hill
- "High Crimes, High Drama: An Insider's Account of the Saddam Hussein Trial"
  Michael Scharf '88, Case Western Reserve University School of Law
- "Just Art? The Place of Art in Rendering Justice"
  Justice Albie Sachs, Constitutional Court of South Africa
- "A Consensual Polity"
  Peter Emerson, The de Borda Institute
- "The Death of Islamic Law"
  Haider Ala Hamoudi, University of Pittsburgh School of Law
- "Doing Business in Latin America — A Symposium"
  Keynote by **Carlos Menem,** former president of Argentina
- "The 'Fourth Wave' of Change on the Korean Peninsula and the Role of the Gaeseong Industrial Park"
  Chung Dong-young, former presidential candidate of the Korean United New Democratic Party

(L-R) PETER D. FEAVER, ALEXANDER F. HEHMEYER PROFESSOR OF POLITICAL SCIENCE AND PUBLIC POLICY AT DUKE; MARIE BESANCON, FOUNDER OF AMERICAN SUDANESE PARTNERSHIPS FOR PEACE AND DEVELOPMENT; AND JAMES PEARCE JD/LLM '11, DISCUSS THE POLITICS OF INTERVENTION IN DARFUR.

INTERNATIONAL EXPERTS GIVE A GLIMPSE INTO THE COMPLEXITIES BEHIND THE CRISIS IN SUDAN

DARFUR

CHILD IN A REFUGEE CAMP IN DARFUR, SUDAN.

SCHOLARS AND POLICY EXPERTS with experience in the Darfur crisis gathered at Duke Law School March 26–27 to discuss the troubled Sudanese region. The student-organized event highlighted such issues as the International Criminal Court's warrant for the arrest of Sudan's president and a possible role for the U.S. in the region.

Speakers included **Roger Winter**, former special representative of the deputy secretary of state for Sudan; **Rod Rastan**, legal adviser in the Office of the Prosecutor for the International Criminal Court (ICC); and **Marie Besancon**, founder of American Sudanese Partnerships for Peace and Development.

Rastan outlined the factors that led the ICC to issue its March 4 warrant for Sudanese President Omar al-Bashir's arrest on charges of war crimes and crimes against humanity.

An ICC investigation launched in 2005 at the request of the United Nations Security Council indicated a death toll far beyond the 20,000–30,000 people killed by actual fighting in Darfur, he said. "A very large number of people have died as a result of the violence through displacement, through starvation, through disease. ... Crimes involving massive killings, forcible displacement, rape, pillage, [and] destruction of property."

The three-judge ICC panel that reviewed the investigatory material turned down prosecutors' request that Bashir be charged with genocide. Rastan said his office is still considering an appeal, but noted that the genocide charge also could be pursued at a later date.

Besancon outlined the complex political situation in Sudan, which involves shifting alliances between groups divided by geography, ethnicity and religion, and influence from regional players like Libya and Chad. The outcome of any effort to unseat Bashir cannot be predicted, she said. "These guys are all making deals with each other, and there are no permanent deals." Besancon also called U.S. and International policy toward Sudan "incredibly disjointed" and too easily influenced by activists who don't understand the ramifications of their actions.

Winter, who has worked in Sudan for more than 25 years, recounted his role in helping broker a peace agreement in 2005 between the Sudanese government in Khartoum and rebels in the South. The

Comprehensive Peace Agreement (CPA) ended a 21-year civil war in Sudan, and was considered one of the Bush administration's most prominent foreign policy achievements. However, rebel groups in Darfur immediately sparked new violence, and the Sudanese government responded with the extreme measures that led to the ICC charges against Bashir.

The situation in Darfur poses unique diplomatic challenges, said Winter, because the various rebel groups in Darfur are poorly organized and have no political platform to speak of.

"Whereas the [rebels in Southern Sudan] were capable of a viable movement, the rebel leadership in Darfur doesn't talk to each other," Winter said.

The conference was organized by the Student Organization for Legal Issues in the Middle East and North Africa (SOLIMENA). James Pearce JD/LLM '11, who served as a U.N. rule of law officer in Darfur in 2007, said the event accomplished its goal of advancing dialogue and understanding of the crisis in Darfur.

"The speakers and panelists did not always agree, but the picture that emerged from the talks and panel discussions provided a nuanced starting point for those interested in Darfur in the context of international criminal law, U.S. policy responses to mass atrocity, and the future of the Sudanese state," said Pearce, who founded SOLIMENA this year.

SOLIMENA hopes to hold another conference on Darfur next year, Pearce said.

– *Forrest Norman*

"Looking Deeper: What Darfur Tells Us about Genocide, International Criminal Law and the Future of a Country" was sponsored by the Duke Center for International and Comparative Law, Duke Islamic Studies Center, the AB Duke Endowment, the Department of Political Science, the Department of Asian and Middle East Studies, the Career and Professional Development Center, the Duke Law JD/LLM Program in International and Comparative Law, the Kenan Institute for Ethics, and the Duke Program in American Grand Strategy/Triangle Institute for Security Studies.

GLOBAL LAW WORKSHOP ALLOWS STUDENTS TO HELP DEVELOP SCHOLARSHIP IN INTERNATIONAL AND COMPARATIVE LAW

STUDENTS ENROLLED in Duke's Global Law Workshop this year had a chance to help shape scholarship on a range of international and comparative law topics, from international corporate law to how non-governmental organizations measure corporate ethical standards.

A year-round workshop sponsored by the Center for International and Comparative Law (CICL), the Global Law Workshop invites leading scholars to present works in progress. Students prepare comments on each paper in advance of its presentation and contribute to its development alongside Duke Law faculty.

"Our students have the chance not only to hear about new ideas and to see how they are developed, they can even get involved in this development through their discussions," said Professor Ralf Michaels, CICL director and convenor of the workshop. In the spring 2009 semester, Deborah DeMott, the David F. Cavers Professor of Law, served as co-convenor.

Scholars presenting at recent Global Law Workshops included **Richard M. Buxbaum**, law professor at the University of California, Berkeley School of Law, and **Peter Gourevitch**, law professor at the University of California, San Diego School of International Relations and Pacific Studies.

"Many guest speakers have remarked how much they benefitted from sharing their ideas with our law students, and many of our law students have called the Global Law Workshop a unique experience during their time at the law school," said Michaels.

BERNSTEIN LECTURE FEATURES LEADING SCHOLAR OF LEGAL PLURALISM

WILLIAM TWINING, a leading scholar of comparative law, evidence law, and general jurisprudence, delivered the seventh annual Herbert L. Bernstein Lecture in International and Comparative Law on April 7. Twining is the Quain Professor of Jurisprudence Emeritus, University College of London and a regular visiting professor at the University of Miami Law School. He discussed legal pluralism in a global context.

Introducing Twining as "perhaps the leading writer on legal theory and globalization," Professor Ralf Michaels highlighted the current importance of the topic.

"In the West, we used to think of all law as state law, relatively neatly organized," Michaels said. "Today, under the impact of globalization, we know that legal pluralism is everywhere. It describes the cultural defense in U.S. courts, the confluence of human rights law and municipal regulations, the conflict of Islam and Western law."

Theories of legal pluralism, said Twining, "developed largely in relation to small face-to-face groups and communities." On a larger scale, we might be asking "old ideas about legal pluralism to do too much work," he suggested.

"We're a long way from having a settled framework of basic concepts, let alone a fully integrated overarching general theory of norms, with no agreed vocabulary, no settled taxonomy of types of rules or norms, and an uneven body of theorizing about a bewildering range of issues," Twining said.

The Herbert L. Bernstein Memorial Lecture in International and Comparative Law began in 2002 and honors the career and scholarship of Bernstein, who was a member of the Duke Law faculty from 1984 until his death in 2001.

Sponsorship for the Bernstein Lecture over the next five years will be provided by the Duke Club of Germany, a nonprofit organization started by German alumni, in honor of the academic enthusiasm and personal kindness of Bernstein and his wife, Waltraud.

STUDENT PROFILE

Dineo Mpela-Thompson '09

Externship in South Africa cements career goals

DINEO MPELA-THOMPSON'S journey to South Africa began in the fall semester of her 2L year when Fatima Hassan LLM '02 came to speak to her AIDS and the Law class. Hassan, one of South Africa's leading practitioners of AIDS law, worked with the AIDS Law Project in Johannesburg until December 2008 and is a member of Cape Town's Treatment Action Campaign.

"Fatima did a lot of litigation with pharmaceutical companies to reduce drug prices for ARVs," Mpela-Thompson says, referring to the antiretroviral (ARV) drugs used to suppress the HIV virus and stop its progression. "She gave us an overview of the type of work that she does — South Africa being an area of the world where the HIV epidemic is pretty high — and that got me interested."

Following Hassan's visit, Mpela-Thompson enrolled in the AIDS Legal Project at Duke Law and began working with Clinical Professor Carolyn McAllaster to craft an international externship. "I learn best by practice and wanted the practical awareness and practical challenge that I thought would come with an international placement," she says.

The planning paid off and Mpela-Thompson spent the fall 2008 semester working with the AIDS Law Project and Treatment Action Campaign surveying individuals, conducting case studies, and researching policies that, if implemented, could facilitate access to ARV medication and HIV/AIDS prevention.

Even after extensive negotiations and litigation that made ARVs more affordable, only 19 percent of people who needed the medicine were receiving it, Mpela-Thompson says. The stigma of being HIV positive often hinders progress, she adds, especially in South Africa, where the former president and minister of health denied the AIDS epidemic during their tenures in office.

Mpela-Thompson says her experience abroad was everything she had hoped it would be and more.

"The biggest skill I gained from both the AIDS clinic and externship was learning how to communicate to lay people," she says. "If we can't translate all of the complex legal principles we learn in the classroom into plain language for the people we are trying to help, it's hard to have any relationship with them and that, in large part, is what the practice of law is about."

Mpela-Thompson also enjoyed the cultural experience of living in South Africa for a semester. She took numerous trips to the Western Cape and visited members of her mother's family in Lesotho. "South Africa is a lot bigger than I thought," she says. "I was always on the road, but I wanted to be able to take it all in."

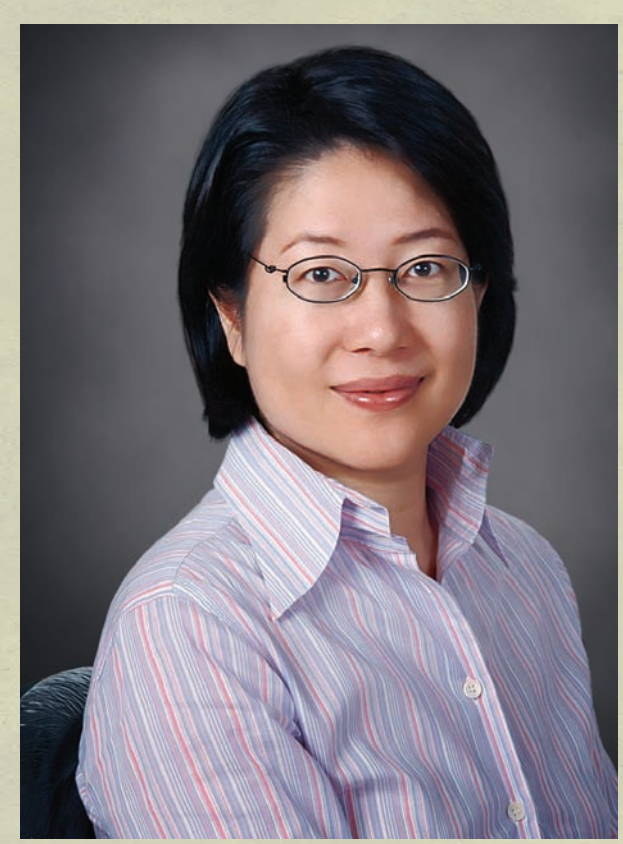
She developed deep friendships with her colleagues, too, which allowed her to gain insight into the issue of stigma, causing her to reflect on the role it plays in the United States' HIV/AIDS battle.

"One of the things that I found — especially within the Treatment Action Campaign which has been able to mobilize a people and thereby get rid of the stigma — is that either by its leaders being public about their HIV-positive status, or by its members wearing the organization's signature 'HIV Positive' T-shirt, they've accepted this epidemic. And, because they have accepted it, they are able to do what they need to in order to get rid of it," she says. "I think that here it would really behoove us to think about ways to get rid of the stigma surrounding HIV/AIDS, so that it wouldn't be both easy and desirable to distance oneself from the realities of the epidemic here at home. One of the ways we do that is by putting a face, or many faces, to the disease."

Above all, Mpela-Thompson says the international externship affirmed her career goals on a number of levels. "My vision is to practice law that has an international landscape," she says. "My South African experience has honed that and given me a niche, so to speak. I now know that I want to do something in the field of public health, specifically HIV/AIDS related.

"I have always thought that the law would be the gateway that I would use to work towards social justice," she says. "This is why I came to law school, and wanted to be a lawyer. But once laws are passed or advocated for and enforced, it is paramount that they actually impact the people they were made to benefit. This was largely what the policy work I did at TAC entailed, and what I ultimately want to be a part of."

– Tanya Wheeler-Berliner



ALUMNI PROFILE

Amy Chin LLM '91

Taiwanese leader in M&A, capital markets, corporate transactions

AMY CHIN CAME TO DUKE LAW School on the recommendation of classmates at Soochow University School of Law in Taiwan. On her return to Taipei, she enthusiastically passed the recommendation on, to Rich Lin LLM '98 and David Chuang LLM '97, among others.

In 1998, the three Duke alumni founded LCS & Partners, a corporate law firm recently ranked by Bloomberg as Taiwan's top firm for mergers and acquisitions by number of deals and deal value. Margaret Huang LLM '00 later also joined LCS as a partner in charge of antitrust practice.

Chin focuses her practice on cross-border mergers and acquisitions, investments, and capital markets. She has worked on such landmark projects as Standard Chartered's $1.2 billion acquisition of Hsinchu Bank in 2006, the first such purchase by an overseas investor; UK Prudential's transfer of its business in Taiwan; and Auchan's acquisition of RT Mart, which was recognized as the largest inbound investment in Taiwan in 2001. Chin has been recognized for her expertise in the area of capital markets and corporate transactions by *Asia Pacific Legal 500* and *Chambers Global*, among other international independent professional evaluation companies.

In January 2005, Chin became the first lawyer to be named by the president of the Republic of China to act as commissioner of the ROC Financial Supervisory Commission (FSC), which supervises and regulates Taiwan's banking, securities, and insurance industries.

Chin says her 18-month service on the FSC helped her learn about the political process. "One of the biggest challenges was to address complicated public policy issues from a macro perspective," she says. Her work with the FSC is the professional accomplishment of which she is most proud, she notes.

In addition to the legal skills she learned at Duke, Chin says her interaction with professors and classmates from all over the world helped her gain perspective and improved English language skills that have been useful as she developed her cross-border practices.

Although she recalls life in Durham to have been almost "too quiet" initially compared to Taiwan, Chin says people like Judy Horowitz, associate dean for international studies, helped her adapt. Some of her most valued friendships, she says, grew out of her "superb" study group for Professor James Cox's Securities Law seminar. Barr Flinn JD/LLM '91 served as team leader of the group, which also included 1991 LLM classmates Suhail Nathani and Ralf Weisser, with whom Chin maintains professional as well as personal contact.

With Horowitz's encouragement, Chin is active with the Duke Law Alumni Association, coordinating the activities of Taiwan's International Alumni Club. Together with her colleagues at LCS & Partners, Chin helped organize a reception and multi-course dinner for Law School alumni in March 2008 at Taipei's Far Eastern Plaza Hotel that Horowitz, Dr. Andrew Huang, and ROC Supreme Court Judge Jiin-Fang Lin LLM '84 SJD '89 attended.

"Amy and I have been in close contact since she was a student at Duke many years ago, and she's been a marvelous host when my husband [James B. Duke Professor of Law Donald Horowitz] and I have been in Taiwan," Horowitz says. "She's extremely enthusiastic about the Law School. Her dedication to Duke has always remained constant."

Having once benefited from the counsel of former classmates as she considered international study, Chin's advice for current students weighing the same option is to focus more on community than law school rankings.

"International students put too much emphasis on ranking. What you can get from a particular school is the key," Chin says. "The friends and faculty I met at Duke are unique to me, which cannot be replaced by anything." – *Matthew Taylor*

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The International Food Fiesta, part of International Week at Duke Law, and the LLM Barbeque, bring together the cultures and cooking skills of Duke's international students.