THE SOKOL COLLOQUIUM

The Twenty-Fifth Sokol Colloquium on Private International Law
University of Virginia School of Law
April 19, 2012

Foreign Affairs Litigation in United States Courts

Sponsored by:
The University of Virginia School of Law
The John Bassett Moore Society of International Law
The Virginia Journal of International Law
The Gustave Sokol Program on private international law was established in 1976 under a grant from the Gustave Sokol Fund. Colloquia bring together distinguished scholars, practitioners and government officials from the United States and abroad to discuss in detail a current topic of private international law.

Thursday, April 19, 2012

All sessions will take place in Caplin Pavilion

8:30-9:00 a.m. REGISTRATION & CONTINENTAL BREAKFAST

9:00 a.m. WELCOME

Dean Paul Mahoney
University of Virginia School of Law

9:15-10:45 a.m. Panel I: Foreign Sovereign Immunity and the FSIA

MEDIUMATOR: John Norton Moore
Walter L. Brown Professor of Law,
UVA School of Law

Speakers: Contemporary Issues in Foreign Sovereign Immunity

H. Thomas Byron III
Civil Division, Appellate Staff,
U.S. Department of Justice

Enforcement Provisions of the FSIA

Steven R. Perles
Senior Attorney, Perles Law Firm

Suing Foreign Officials in U.S. Courts

Chimène Keitner
Associate Professor of Law,
Hastings College of the Law, Univ. of California
The ICJ on Jurisdictional Immunities

Paul B. Stephan
John Jeffries, Jr., Distinguished Professor of Law,
UVA School of Law

10:45 a.m. Break

11:00 a.m.-12:30 p.m. Panel II: Human Rights Litigation

MODERATOR: Deena R. Hurwitz
Associate Professor of Law,
UVA School of Law

Speakers: Non-State Actors & the Alien Tort Claims Act

Ralph Steinhardt
Professor of Law and International Affairs,
The George Washington University

Toward the Rule of Law: Why the Differential Treatment Between Equitable & Civil Actions?

Baher Azmy
Legal Director,
Center for Constitutional Rights

State Accountability: From Support of Terrorism to Expropriation of Cultural Property—The Act of State Doctrine and Its Cousins in Human Rights Litigation

Dr. Allan Gerson
Chairman, AG International Law, PLLC

12:30-1:30 p.m. LUNCHEON

1:30-2:15 p.m. LUNCHEON KEYNOTE ADDRESS:

The Role of the Courts in Foreign Affairs

Chief Judge Royce C. Lamberth
Federal District Court for the District of Colombia
2:15-3:45 p.m. Panel III: Foreign Affairs Takings Actions in the Court of Federal Claims

**MODERATOR:** Pierre-Hugues Verdier  
Associate Professor of Law,  
UVA School of Law

**Speakers:**  
*Is There Such a Thing as a Foreign Affairs Taking?*  
Lewis S. Yelin  
Attorney, Appellate Staff,  
U.S. Department of Justice  

*An Overview of Foreign Affairs Takings Claims*  
Douglas J. Pepe  
Partner, Gregory P. Joseph Law Offices  

*Foreign Affairs Takings: “The Forgotten Flight” A Case Study*  
Stuart H. Newberger  
Partner, Crowell & Moring LLP

3:45 p.m.  
Break

4:00-4:45 p.m. **AFTERNOON KEYNOTE ADDRESS:**  

*The Work of the FCSC*  
Timothy J. Feighery  
Chairman,  
Foreign Claims Settlement Commission

4:45-6:15 p.m. Panel IV: The Foreign Claims Settlement Commission (FCSC)

**MODERATOR:** John K. Setear  
Professor of Law,  
UVA School of Law

**Speakers:**  
*The Nationality Test for FCSC Claims*  
Allan Mendelsohn  
Of Counsel,  
Cozen O’Connor
The FCSC: An Historical Perspective

David E. Bradley
Chief Counsel, FCSC (Ret.)

Jurisprudence of the Commission: A Look to the Future

Steven R. Perles
Senior Attorney, Perles Law Firm
**SOKOL COLLOQUIUM**
~Brief Biographies~

**BAHER AZMY**
Baher Azmy is an esteemed lawyer, professor and scholar, who has actively pursued constitutional and human rights litigation challenging policies emerging from the so-called “war on terror,” including policies related to indefinite executive detention, extraordinary rendition, and torture. Baher Azmy represented Murat Kurnaz, a German resident of Turkish descent imprisoned in Guantánamo Bay by the U.S. military as a so-called “enemy combatant,” until his release in August 2006. He visited Guantánamo numerous times and participated extensively in varied briefing that has occurred in the courts, including in the Supreme Court in *Boumediene v. Bush* and in the consolidated Guantánamo habeas cases. He has continued to provide leadership on issues surrounding Guantánamo cases and national security in a variety of academic, professional, and human rights forums, and has testified before Congress. He also litigated cases challenging police misconduct and violations of the rights of immigrants, prisoners, and the press. He has authored numerous legal briefs in the Courts of Appeals and the United States Supreme Court on various human rights and international law issues, and has produced substantial scholarship on issues related to access to justice. His work on the *Kurnaz* case and others has been featured in a number of prominent media.

**DAVID E. BRADLEY**
Mr. Bradley served as Chief Counsel of the Foreign Claims Settlement Commission of the United States, U.S. Department of Justice, from 1988 until his retirement from Federal Government service in 2008. Since then he has continued to work part-time as a consultant to the Commission. During his tenure as Chief Counsel, Mr. Bradley supervised the successful completion of programs for adjudication of U.S. citizens’ property expropriation claims against Egypt, Iran, and Albania, and U.S. citizens’ Holocaust survivor claims against Germany. He also participated at various times as a member of inter-departmental Executive-branch delegations formed to conduct claims settlement negotiations with Vietnam, Germany, and Albania. In 2003 and 2004, he served as Executive Director of the Guam War Claims Review Commission, a Federal Advisory Committee created under
the direction of the Secretary of the Interior. Mr. Bradley began his legal career as a staff attorney in the Foreign Claims Settlement Commission’s GDR Claims Division. He is a graduate of Davidson College and the George Washington University National Law Center. Between college and law school he served as a commissioned officer in the U.S. Navy.

H. THOMAS BYRON III
Tom Byron has served since 1997 as an attorney on the Appellate Staff of the Civil Division at the United States Department of Justice. As a government litigator, Tom represents the United States and federal government agencies and officials in civil litigation at the appellate stage. He has developed particular expertise in areas of national security and foreign relations law, including the state secrets privilege, foreign sovereign immunity, federal preemption, antiterrorism, and military affairs, as well as administrative law, freedom of information and privacy, constitutional law, and federal jurisdiction and procedure. He has personally argued over 60 appeals in courts around the country, and has briefed or assisted with briefing many more, including dozens in the Supreme Court of the United States. His awards and honors include the John Marshall Award, the Department of Justice’s highest award given to attorneys, which he received for handling appeals (2007) and for providing legal advice (2010). Tom attended Georgetown University (AB 1987, MA 1989) and the University of Chicago Law School (JD 1991). After graduating from law school and serving as a judicial law clerk for Judge Carolyn Dineen King on the U.S. Court of Appeals for the Fifth Circuit in Houston, Texas, he spent five years in private practice in litigation and government affairs with Mayer Brown in Washington, DC, before moving to the Department of Justice.

TIMOTHY J. FEIGHERY
Tim Feighery currently serves as Chairman of the Foreign Claims Settlement Commission of the United States. Prior to this appointment, he was an Attorney Adviser in the Office of International Claims and Investment Disputes, within the Office of the Legal Adviser at the U.S. Department of State. He has also served as a Deputy Special Master for the September 11th Victim Compensation Fund of 2001 and as a Chief of Section of the Legal Services Branch of the United Nations Compensation Commission in Geneva. Mr. Feighery has also worked as a Senior Attorney in the Bureau of Competition at the Federal Trade Commission, and began his career at Kaye Scholer LLP, where he worked in its New...
York, Brussels and Washington D.C. offices. Mr. Feighery taught international law and European Union law as an Adjunct Professor at the George Mason University School of Law.

**DR. ALLAN GERSON**

Allan Gerson is recognized as the first attorney to engineer a practical basis for suing foreign governments for acts of terrorism. After the 1988 bombing of Pan Am Flight 103 over Lockerbie, Scotland, he initiated the first civil suit against a foreign state (Libya). In 1996, Dr. Gerson’s efforts were instrumental in the passage of the Anti-Terrorism and Effective Death Penalty Act, which provides U.S. citizens with the right to sue foreign governments in U.S. courts for complicity in terrorism. The outcome was an historic $2.7 billion settlement with Libya. In 1981, Dr. Gerson was chosen to serve as Senior Counsel to U.S. Ambassador to the United Nations, Jeane Kirkpatrick. From 1989 to 1995, he served as a Distinguished Professor of International Law and Transactions at George Mason University. In 1998 through 2002, he was Senior Fellow for International Law and Organizations at the Council on Foreign Relations. In 2003, he served as Senior Counsel to the US Delegation to the Commission on Human Rights. His private practice revolves around his role as Chairman of AG International Law.

**PROFESSOR DEENA R. HURWITZ**

Deena Hurwitz joined the UVA School of Law faculty in 2003 as director of the Human Rights Program and the International Human Rights Law Clinic. Before entering academia, Hurwitz served as a legal counselor with the Washington Office of the U.N. High Commissioner for Refugees. She spent 1997-99 in Bosnia and Herzegovina, where she was director of Global Rights’ (then the International Human Rights Law Group) Bosnia program for 14 months. Before joining the Law Group, Professor Hurwitz served as OSCE liaison officer to the Human Rights Coordination Centre of the Office of the High Representative in Bosnia and Herzegovina. She has also been a consultant with the Women’s Division of Human Rights Watch, investigating violations of women’s rights under Morocco’s Family Code. More recently, she has worked in Afghanistan and Lebanon on clinical legal education, and in Suriname on the rights of indigenous peoples to education and non-discrimination. She also has an interest in the practical aspects of modern Islamic law.
PROFESSOR CHIMÈNE KEITNER
Chimène I. Keitner is an Associate Professor of Law at the University of California Hastings College of the Law, where she focuses on the intersection between international law and domestic litigation. Her publications include a book, *The Paradoxes of Nationalism* (2007), and over twenty articles, essays, and book chapters, including "The Forgotten History of Foreign Official Immunity" in the *New York University Law Review* (2012) and "Rights Beyond Borders" in the *Yale Journal of International Law* (2011). Professor Keitner previously served as a law clerk to the Chief Justice of the Supreme Court of Canada. She holds degrees from Harvard University (A.B., History and Literature), Yale University (J.D.), and Oxford University (D.Phil., International Relations), where she was a Rhodes Scholar.

THE HONORABLE ROYCE. C. LAMBERTH

DEAN PAUL G. MAHONEY
Paul G. Mahoney became dean of the UVA Law School in July 2008. He is a David and Mary Harrison Distinguished Professor and the Arnold H. Leon Professor of Law. Mahoney's teaching and research areas are securities regulation, law and economic
development, corporate finance, financial derivatives and contracts. Mahoney joined the Law School faculty in 1990 after practicing law with the New York firm of Sullivan & Cromwell and clerking for Judge Ralph K. Winter, Jr. of the U.S. Court of Appeals for the Second Circuit and Justice Thurgood Marshall of the Supreme Court of the United States. Mahoney is a member of the Council on Foreign Relations and served as an associate editor of the Journal of Economic Perspectives from 2004 to 2007 and as a director of the American Law and Economics Association from 2002 to 2004. He is a past recipient of the All-University Outstanding Teacher Award and the Law School's Traynor Award for excellence in faculty scholarship.

**ALLAN MENDELSOHN**

Allan Mendelsohn is of counsel to Cozen O’Connor where he represents companies involved in transportation industry matters before the courts, federal agencies and departments, and the Congress. He has also litigated transportation related and other cases in the federal district and appellate courts and regularly works with the Department of Transportation, the Federal Aviation Agency, and the Department of State in connection with both transportation and general international legal issues. He has extensive experience as an arbitrator in both single and tripartite arbitrations involving both domestic and international issues. In addition to serving as deputy assistant secretary of state for transportation affairs during 2000-2001, Mr. Mendelsohn served as an attorney in the State Department’s Legal Advisor’s Office from 1963-1968. During both periods, he was deeply involved in all areas of aviation and maritime law and policy. During his most recent service at State, he led the team of American negotiators that concluded the world's first multilateral open skies passenger and cargo agreement, now known as the APEC Multilateral Accord. Since leaving State, he has participated as a member of the OECD’s Panel of Experts in drafting the text of a proposed multilateral open skies all-cargo agreement.

**PROFESSOR JOHN NORTON MOORE**

John Norton Moore is the Walter L. Brown Professor of Law at the University of Virginia School of Law. He also directs the University’s Center for National Security Law and the Center for Oceans Law & Policy and was the Director of the Graduate Law Program at Virginia for more than twenty years. Viewed by many as the founder of the field of national security law, Professor Moore chaired the prestigious American Bar Association’s Standing
Committee on Law and National Security for four terms. In addition to his scholarly career, Professor Moore has a distinguished record of public service. Among seven Presidential appointments, he has served two terms as the Senate-confirmed Chairman of the Board of Directors of the United States Institute of Peace and, as the first Chairman, set up this new agency. He also served as the Counselor on International Law to the Department of State, and as Ambassador and Deputy Special Representative of the President to the Law of the Sea Conference, Chairman of the NSC Interagency Task Force on the Law of the Sea, and as a member of the United States’ legal team before the International Court of Justice in the Gulf of Maine and Nicaragua cases.

STUART H. NEWBERGER
Stu Newberger is a Washington-based partner with the international law firm of Crowell & Moring LLP. His practice centers on complex litigation in the U.S. federal and state trial and appellate courts, as well as the U.S. Supreme Court, and in international arbitration venues around the world. He co-chairs the firm's “International Dispute Resolution” practice group. A large part of Stu's practice arises from actions and decisions of governments. The issues range from “private commercial” activities to “public policy” issues. In addition to courts and international arbitration venues (especially ICSID, ICC, UNCITRAL, and others), he has worked extensively with international organizations (such as the United Nations and the World Bank/IMF), executive and regulatory agencies (including the U.S. Department of State, the U.S. Department of Justice and the European Commission of the EU), and legislative bodies such as the U.S. Congress. He served as an Assistant U.S. Attorney in Washington, DC, and was an Adjunct Professor of Law at Georgetown University for many years. He also has lectured on law, international affairs and public policy issues at several other universities and institutions. He is on the Council of the Woodrow Wilson International Center for Scholars.

DOUGLAS J. PEPE
Douglas J. Pepe is a Partner of Gregory P. Joseph Law Offices. He litigates high-stakes commercial matters on behalf of corporate and institutional clients in cases involving complex issues under the Securities Act, the Securities Exchange Act, the Private Securities Litigation Reform Act, the Securities Litigation Uniform Standards Act, the RICO Act, and other domestic and multinational corporate and derivative litigation, as well as insurance subrogation, mass
tort, aircraft disaster and terrorism litigation. Mr. Pepe has both prosecuted and defended billions of dollars in claims, implicating a wide variety of complex substantive and procedural issues. Mr. Pepe played a leading role in the Firm’s service on the Court-appointed Executive Committee charged with directing the subrogation and property damage claims arising out of the 9/11 terrorist attack, which were successfully resolved in a $1.2 billion settlement approved by the United States Court of Appeals for the Second Circuit in April 2011.

STEVEN R. PERLES
Steven R. Perles is the senior attorney and founder of the Perles Law Firm, P.C. After graduating from law school, Mr. Perles worked on Capitol Hill for several years. In 1981, after serving as chief legislative assistant and staff attorney for the late Senator Ted Stevens (R-Alaska), former president pro tem of the Senate and chairman of the Senate Commerce Committee, Mr. Perles began his private practice. Mr. Perles has handled a number of cases before Supreme Court of the United States, United States courts of appeals and district courts across the country. His litigation practice has included important cases in the field of Foreign Sovereign Immunities Act litigation, particularly cases involving claims against or the defense of foreign governments before United States federal courts and administrative agencies. He has represented foreign and domestic clients under the Administrative Procedure Act in matters before the United States Departments of Commerce and Interior, the Environmental Protection Agency and the Foreign Claims Settlement Commission of the United States. Mr. Perles also has extensive experience in foreign commercial negotiations in Africa, Asia and Latin America.

PROFESSOR JOHN K. SETEAR
John K. Setear joined the University of Virginia School of Law as professor of law in 1998. He primarily teaches courses in international law, including international environmental law and counterfactual diplomatic history. Professor Setear joined the faculty of UCLA Law School in 1991 after serving as a policy analyst in the behavioral sciences department of the RAND Corporation. During the 1995-96 academic year, he was a fellow of the Woodrow Wilson International Center for Scholars. While in law school, Mr. Setear was editor-in-chief of the Yale Law Journal. Following graduation, he clerked for U.S. Supreme Court Justice Sandra Day O’Connor and Judge Carl McGowan of the U.S. Court of Appeals for the District of Columbia Circuit.
PROFESSOR PAUL B. STEPHAN
Professor Paul Stephan is an expert on international business and Soviet and post-Soviet legal systems. He has advised governments and international organizations, organized conferences, edited books and lectured to professionals, university groups and high school students on a variety of issues raised by the globalization of the world economy and the transition away from Soviet-style socialism. During 2006-07, he served as counselor on international law in the U.S. Department of State. Other interests for Stephan, who joined the UVA Law School faculty in 1979, include international law, taxation and constitutional law. Since the collapse of the Soviet Union, Professor Stephan has worked on a variety of projects involving law reform in former socialist states. He has worked in Russia, Georgia, Ukraine, Albania and Slovakia on behalf of the U.S. Treasury and in Kazakhstan and Azerbaijan on behalf of the International Monetary Fund. He also has organized training programs for tax administrators and judges from all of the formerly socialist countries under the auspices of the Organization for Economic Cooperation and Development.

PROFESSOR RALPH STEINHARDT
Professor Steinhardt specializes in international law, human rights, conflicts of laws, international civil litigation, and international business transactions. He teaches at The George Washington University. He is co-director of the Oxford-GW Program in International Human Rights Law at New College, Oxford. His current research and advocacy concern the human rights obligations of multi-national corporations. He now serves as the only U.S. citizen on the Expert Legal Panel on that subject under the auspices of the International Commission of Jurists and has served as an expert witness in several federal cases testing the liability of corporations for aiding and abetting human rights violations by governments. He has served as legal counsel to several foreign governments in both commercial and inter-governmental matters, including border disputes and economic relations, and pioneered the application of international human rights law in U.S. courts. He served as counsel to the U.N. High Commissioner for Refugees, Amnesty International, Human Rights Watch, and the International Human Rights Law Group, as well as to individuals alleging violations of international human rights law.
PROFESSOR PIERRE-HUGUES VERDIER

Pierre-Hugues Verdier joined the UVA law faculty in 2009. He specializes in international law, financial regulation and the role of law in international economic relations. His current research focuses on the role of transnational networks of regulators in supervising financial and banking markets, and on the design of international regulatory regimes. After graduating from McGill University’s Faculty of Law in 2001, Professor Verdier clerked for the Supreme Court of Canada, practiced corporate and financial law with Cleary Gottlieb Steen & Hamilton in New York City, and pursued graduate legal studies at Harvard, where he was a John M. Olin Fellow in Law and Economics. Prior to joining the faculty, he also was affiliated with the Weatherhead Center for International Affairs and taught at Boston University School of Law.

LEWIS S. YELIN

Lewis Yelin is an attorney on the Appellate Staff of the Department of Justice’s Civil Division, a position he has held since 2002. Lewis has represented the United States in the federal courts of appeals in a wide variety of civil matters and has special expertise in cases involving presidential authority and constitutional separation of powers, foreign relations law, national security, and federal labor law. In 2008, he helped develop the domestic legal framework for the U.S.-Libya Claims Settlement Agreement, under which Libya paid the United States $1.5 billion, with which the United States compensated victims of past Libyan-sponsored terrorism. In 2009, Lewis was detailed to the State Department, where he served for seven months as Counselor on International Law in the Office of the Legal Adviser. After law school, Lewis clerked for Hon. Betty B. Fletcher on the United States Court of Appeals for the Ninth Circuit. He then served as the first Francis D. Murnaghan, Jr. Appellate Advocacy Fellow at the Public Justice Center in Baltimore, MD, before joining the Appellate Staff.
“For as in absolute governments the king is law, so in free countries the law ought to be king; and there ought to be no other.”
—Thomas Paine, *Common Sense* (1776)


*Foreign Affairs Litigation in United States Courts: The Twenty-Fifth Sokol Colloquium*, John Norton Moore, ed., will be in production in the fall of 2012. Professor David Stewart from Georgetown University will be submitting an additional paper for this volume entitled “Cooperative Federalism: The Convention on Choice of Court Agreement.”

2012 Sokol Colloquium Committee

John Norton Moore, Chair
John K. Setear
Pierre-Hugues Verdier

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