Message from the Europe Committee

We congratulate Europe Committee member Nathan Rice on leading the team of Europe Committee members and friends who have brought to fruition this special issue of EUROPE UPDATE, the hot topics newsletter of our Europe Committee. This issue provides a taste of the breadth and depth of Europe Committee activities at our Section’s Washington DC 2013 spring meeting. As our committee focuses on the update of its business plan for the American Bar Association year commencing in August at the close of the ABA 2013 annual meeting in San Francisco, this newsletter constitutes a quality point of departure for deliberations about our Committee’s plans for the coming bar year.

Marie Scott, chief editor of our Committee’s Year in Review contribution, has circulated a call for Year in Review submissions, due early this fall. That call for submissions focuses on themes of corporate and financial law of the European Union, as well as on the judicial decisions of the European Court for Human Rights. Circulated to the 800 some lawyers who comprise our Committee listserv (posted on our webpage and included in this issue of EUROPE UPDATE), it underlines a strategic direction proposed by our Committee leadership for the coming year, namely a focus on the development of European law, with emphasis on the interaction of European and national legal institutions.

Look for our monthly calls the first Tuesday of each month at 11 am Washington, DC/5 pm Paris time. Our next one is schedule for Tuesday, June 4, 2013. We will use the call to begin discussion of renewal of our Committee’s business plan for the bar year starting at the end of the ABA annual meeting in early August.

We warmly welcome outreach from Europe Committee members who would like support in becoming more active volunteers in the work of our Committee.

Patrick Del Duca, Florian Jörg, Europe Committee Co-Chairs

A Note from the Editors

This hot topic issue of EUROPE UPDATE highlights issues and activities of interest to Europe Committee members at the recently concluded meeting of our Section in Washington DC. Hopefully it wets the appetites of our members for the London meeting of our Section forthcoming this October.

Look yet this summer for a further issue of our Europe Committee’s HOT TOPICS NEWSLETTER on Europe/China direct investment.

We welcome our Europe Committee members who wish to step forward as guest editors to organize further issues such as this one and others posted on the Europe Committee website.

Francesca Giannoni-Crystal (fgiannoni-crystal@cgcfirm.com), Michael L. Balistreri (michael.balistreri@rbi.com), Editors

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About the Europe Committee

The Europe Committee seeks to engage lawyers conducting practices that touch Europe, including the various European countries, the European Union, and the institutions of the Council of Europe. It nurtures a community of lawyers sophisticated in cross-border matters, comparative law, and the continuously emerging transnational law of Europe, public and private. The Europe Committee’s activities include the sponsorship of programs at the Section of International Law’s seasonal meetings, hot topics teleconferences and newsletter presentations by experts on emerging developments of European law, exploration of legal policy and law reform topics, contribution to the Year in Review issue of The International Lawyer, and co-sponsorship of Section of International Law standalone and other programming.

The Europe Committee’s membership is its most important asset. We encourage all Committee members to be involved in Committee activities and to communicate freely suggestions and ideas.

Upcoming Events

ABA Section of International Law
2013 Leadership Retreat
Sausalito, California
August 7-9, 2013

Leadership and Teambuilding events include both a Basic/Refresher Track and an Experienced/Advanced Track for new, returning, and veteran section leaders, all in the beautiful setting of Calvallo Point in the shadow of the Golden Gate Bridge.

London Fall 2013 Meeting
October 15 – 19
Of interest to Europe Committee members

Among the programs to be presented at the American Bar Association’s Section of International Law 2013 Fall Meeting in London are multiple programs of which the Europe Committee is a co-sponsor. The tentative list of programs is now available for download on the ABA website.

Of particular note for those considering attending is that the host hotel for the 2013 Fall Meeting is the London Hilton on Park Lane. The deadline for reservations at the discounted room block rate is August 26, 2013 at 5:00 p.m. EDT.

Additionally, the following Committee events are in the planning phase for the Fall Meeting:

- Europe Committee “Fun” Event—TBD
  Tuesday evening, October 15th, following the welcome reception

- Europe Committee Dinner—TBD
  Wednesday evening, October 16th, following the reception

- Europe Committee Business Meeting
  Thursday October 17th, 9-10, Location TBD

* Updates to follow in future Issues.
The welcoming nature of the Europe Committee was greater than I could have ever expected. I will admit that I was intimidated at first. After all, I was still a student. However, the Europe Committee membership was quick to incorporate me into activities, discussions, and networking opportunities that put me at ease. The meeting provided invaluable personal and professional experiences that helped me to network with attorneys from all over the world and taught me some of the realities of law practice that you simply cannot get from a classroom.

Special thanks are in order to a number of individuals who helped make this newsletter possible. First, thank you to Patrick Del Duca and Florian Jörg for trusting me to put this project together. Second, thank you to all of the volunteer reporters for their time and efforts to create articles. Third, thank you to the administration at SIU Law, for understanding the value of an international legal education, and finally, thank you to the Europe Committee membership for making the spring meeting a truly enjoyable experience.

I believe this newsletter is an accurate reflection of the spring meeting. It offers a variety of reports on the wide range of meetings, activities, and programs that took place in Washington D.C. I hope you enjoy reading the newsletter as much as I enjoyed putting it together.
No. No, Europe is not a country. Sylvain Beaumont, a French attorney, opened the program by setting that clear. He offered brief, synthetic guidance to understand how law is made for the European Union, and the role of the institutions creating such law. He affirmed that building a harmonized European legal system takes time, cooperation and compromise.

The EU is a legal system based on treaties, international agreements and legislation. Primary and secondary sources of EU law are both governed by two principles: subsidiarity and proportionality. The founding treaties are called primary sources. The Treaty of Lisbon, in force since 2007, amended each of the Treaty on European Union and the Treaty establishing the European Community.

The Treaties empower the institutions of the EU to legislate. The Commission, the European Parliament, and the Council work together to build and harmonize European law. After a process of drafting, review and adoption, regulations and directives are adopted through procedures involving these three European institutions. Regulations are directly binding on all EU Members; they are per se domestic law of each Member State. Directives in contrast are intended to be binding only after domestic implementation, but in many circumstances following a Member State’s failure to satisfy its obligations of timely implementation of a directive, such a directive does have direct legal effect. The allowance by directives of a period of time for national implementation of their content seeks to assure the uniformity of European Union law, while respecting the diversity of national traditions and structures.

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The directive gives guideline to address the quality of the data, the legitimacy of the data processing and special categories of processing. It first aims at protecting the processing of the personal data of individuals. The directive relates to the rights and freedom of the person object of the data and also to the obligations of the data controller as regards to the information, access to it, and restrictions and exemptions in respect of it.

The directive will be replaced by a new regulation that should come into force in 2014 to broaden the definition of personal data. It will set out a general European framework for data protection. And, it will be combined with a new directive that would protect personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities.

The new reform aims at protecting privacy and extending its scope. With the new area of social networking and computing, a new level of harmonization to secure personal data was needed.

Closing the program, Stéphane de Navacelle, attorney at law in Paris, gave a brief presentation of Directive 2003/6/CE on insider dealing and market manipulation (Market Abuse Directive - MAD). The directive sets a general framework to fight insider trading and market manipulation practices. It aims at strengthening investor confidence and market integrity.
Business meeting of the European Committee,  
April 25, 2013  
a report by Carine Feipel

About 15 persons attended in person the Business Meeting of the Europe Committee held during the Section’s Spring Conference in Washington D.C., with additional members joining the meeting by phone.

After all attendees introduced themselves, Georgi Gouginski overviewed the panel that he would preside the next day. For the benefit of Committee members contemplating proposals of future panel presentations, Georgi reviewed key steps in the formulation of his successful proposal. Everyone hoped for a great turnout, similar to the Committee’s panel on the activities of Notaries held two days prior, which saw significant audience engagement.

Florian Jörg then reported on the Committee’s fourth Fun Event organized by Pat English: the Haunted Pub Tour in Washington: three pubs were visited by the group of over thirty Committee members and friends. Drinks and food were enjoyed by everyone until late into the night.

Alexandra Darraby reported on Programming, highlighting two programs co-sponsored by the Europe Committee that have been accepted for the London fall 2013 meeting of the Section of International Law. She commended Committee members on the very strong presence of the Europe Committee at the Spring 2013 meeting in Washington DC.

Patrick Del Duca explained that the Section will change the process for the choice of programs: for the New York City Spring 2014 meeting of the Section, the focus for the choice of the programs will be on the Committees. The goal is to alleviate the burden to choose the good proposals and the management of frustration of the ones not selected. Each Committee will be given a number of slots. The Europe

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Committee might have two to three. Official Committee proposals will have a greater chance to be slotted. Committee members were encouraged to come forward with program proposals for support and coaching in view of the New York 2014 Spring Meeting.

The past year has been very rich in terms of publications. Francesca Giannoni-Crystal reported on the launch of the Europe Committee’s “Hot Topics Newsletter” known as EUROPE UPDATE. The editors have been happily inundated with proposals from members. Four newsletters have been published already, and three more, including the special edition on the spring meeting, are being finalized. This model of newsletter publication definitively seems to be very successful.

Nathan Rice then provided some more details on the Spring Meeting Newsletter: 12-15 reporters have been appointed to report on the Committee's activities and take pictures of the events. A wide range of topics will be covered, including outside the Europe Committee. Three French LLM students, under the direction of Bill Johnson at St. Louis University Law School, are also providing contributions.

On the Year in Review, Marie Scott reported that the definitive publication of the 2013 edition should be available soon. For 2014, the focus should be on European Law. Marie has circulated to the Committee listserv (also published on the Committee web page) a call for submissions on three broad topics (corporate law, financial law, European Court for Human Rights) including national law perspectives. Each contribution should be no more than 700 words.

Patrick Del Duca concluded the business meeting by reporting on the successful initiation of Europe Committee in the area of policy initiatives: Werner Kranenburg reported that Patrick, Werner, former Section chair Glenn Hendrix, and Laurence Wiener (Committee of US lawyers practicing abroad) attended the meeting with two representatives from the Department of State. The meeting lasted for approximately 90 minutes and dealt mainly with the joint policy initiative of the Europe and US Lawyers Practicing Abroad Committees concerning law reform efforts to reduce the burdens associated with notarization outside the United States of signatures for US legal purposes. It was noted that each Committee is expected to undertake at least one policy initiative per year, and Europe Committee members are encouraged to come forward with ideas.
This session, presented on April 24, 2013, was very well attended, an indication of the level of interest in global protections for trademarks and IP generally. The panel consisted of Alan Datri (WIPO, Senior Counsellor, Office of the Deputy Director General, Brands and Designs Sector, Geneva, Switzerland), Julia Anne Matheson (Finnegan, Henderson, Farabow, Garrett & Dunner LLP, New York) and Albert Tramposch (Deputy Executive Director for International and Regulatory Affairs, AIPLA, Washington DC).

The all-star panel of speakers was ably moderated by Susan Brushaber (Reinhardt LLP, Denver, Colorado) and the chairs of the session were Alexandra Darraby (Art Law Firm, Los Angeles) and Bruce A. McDonald (Buchanan Ingersoll & Rooney PC, Washington DC).

In fitting with the international theme of the session, Bruce McDonald and Alan Datri flew in from Moscow and Geneva, respectively, just in time to take their seats at the head table.

Albert Tramposch began with a detailed introduction to the international IP protection regime touching on the Paris and Berne Conventions before coming around to the United States’ adoption of the Madrid Protocol in November 2003. Of particular interest to non-US lawyers was his explanation of the role of AIPLA as regards international systems of IP (and specifically trademark) protection. Al also touched briefly on some of the early UDRP cases with which he was involved and only the constraints of time truncated a very interesting discussion on the success of that system.

Next up was Alan Datri who whetted the appetite of the audience for all things WIPO with some very attractive slides showing its headquarters in Geneva, Switzerland. Alan gave a root and branch explanation of the origins of what we now know as the Madrid System, stretching back to its origins in the Madrid Agreement of 1891. The Madrid System for trademark protection was aptly summed up by Alan when he compared it to a Ferrari – noting that you need a good practitioner to drive it. He finished up with some very useful statistics and effects of the current economic downturn could be clearly seen in global filing patterns.

After the Ferraris’ of Geneva, Julia Anne Matheson stepped forward to provide the US practitioner’s view of obtaining international protection for marks. She noted in particular the importance of securing marks globally for defensive reasons. She also highlighted the cost savings, efficiencies and advantages associated with seeking to protect marks through the Madrid System – certainly in comparison to completing national filings. Julia Anne also pointed out (which is of particular relevance to US companies) that aside from Mexico and Colombie, there are very few South American members of the Protocol.

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The wide and varied global membership of the Madrid Protocol was also emphasized by Bruce McDonald to great effect by listing all 89 members on a single PowerPoint slide. Bruce spoke about one of the key beneficiaries of the system, namely the multi-national company with a trademark portfolio and a budget to protect it. Importantly however, he also spoke to the weaknesses in the multi-jurisdictional registration system, in the risk of central attack. He explained that for a period of five years from the date of the international registration, the protection resulting from the international registration remains dependent on the mark remaining registered with the office of origin, i.e. the initial registration. This means that where the basic registration is cancelled, renounced, revoked, invalidated or has lapsed, the international protections also lapse.

The possibility of marks being denied protection due to a “central attack” was carried through into a lively Q&A session with Alan Datri noting that it is in fact not very common in practice for such central attacks to succeed.

The possibility of marks being denied protection due to a “central attack” was carried through into a lively Q&A session with Alan Datri noting that it is in fact not very common in practice for such central attacks to succeed. Alan extolled the virtues of the savings achievable by international filings – not least the back-end savings associated with defeating mark infringements globally.

Susan Brushaber brought the session to a close with a very thoughtful summary of the discussions and noted that her own grandmother, who was a trademark agent, would have benefited greatly from the Madrid Protocol.

Following the Literary Pub Crawl in Dublin, the Bowling Competition in New York and the Flamenco Evening in Miami Beach, it has become a tradition that the Europe Committee hosts, together with the International Joint Venture and M&A Committee, a fun event on Tuesday evening at the seasonal ABA SIL meeting. This time, a sizeable crowd of some 30 members of both committees gathered inside the Occidental Grill Bar for the Haunted Pub Tour in Washington DC, organized once more by the Europe Committee’s fun officer Pat English from Irish firm Matheson.

The Occidental is an iconic Washington establishment and a natural place to start the tour. Our guide regaled us with a very old story of two former bartenders who were found dead in a stuck elevator (with a full (but impenetrable!) barrel of beer), having been forgotten on the closing night of a previous owner. The legend goes that their spirits stopped harassing bar staff and guests only after their pictures were hung in a secret location on the walls of the building ..... hardly surprising!

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From there, the crowd moved on to the equally famed Old Ebbit Grill to have more drinks and hear about Washington’s oldest bar and restaurant.

Not far away, the tour then stopped at Washington’s most favorite haunted house, also known as the “White House”. Our guide informed us that the ghost of the late Abraham Lincoln himself still visits from time to time, especially the “Lincoln Bedroom”. It is said to have caused no lesser than Great Britain’s Prime Minister, Sir Winston Churchill, to flee the bedroom one night in panic and completely naked…. The evening concluded at The Hamilton where no evil but certainly other spirits were waiting, together with food, for the thirsty and hungry participants.

Thanks to all for participating and see you in London in October!
Panel Presentation: Treaties, the Constitution and States’ Rights: The Case of the Hague Convention on Choice of Courts Agreements
a review by Giuseppe Lorenzo Rosa

On April 25, 2013, the Spring Meeting of the American Bar Association’s Section of International Law offered a lively presentation and discussion, chaired by Barton Legum, Esq., the Section’s Chair, addressing the intriguing topic of federalism and the Hague Convention on Choice of Courts Agreements, a convention now open for ratification by States.

As an Italian and European Union attorney, long and broadly committed to international business law at large, I am always fascinated to reflect on how sensitive, and possibly complicated, the issue of consistency and implementation of international treaty obligations might prove to be within federal systems, such as the United States of America.

The Preamble of the Hague Convention on Choice of Courts Agreements, concluded June 30, 2005, states:

“The States Parties to the present Convention, desiring to promote international trade and investment through enhanced judicial cooperation, believing that such cooperation can be enhanced by uniform rules on jurisdiction and on recognition and enforcement of foreign judgments in civil or commercial matters, believing that such enhanced cooperation requires in particular an international legal regime that provides certainty and ensures the effectiveness of exclusive choice of court agreements between parties to commercial transactions and that governs the recognition and enforcement of judgments resulting from proceedings based on such agreements, have resolved to conclude this Convention and have agreed upon the following provisions. . .”

Article 5, Jurisdiction of the chosen court, provides:

“(1) The court or courts of a Contracting State designated in an exclusive choice of court agreement shall have jurisdiction to decide a dispute to which the agreement applies, unless the agreement is null and void under the law of that State.

(2) A court that has jurisdiction under paragraph 1 shall not decline to exercise jurisdiction on the ground that the dispute should be decided in a court of another State.

(3) The preceding paragraphs shall not affect rules - a) on jurisdiction related to subject matter or to the value of the claim; b) on the internal allocation of jurisdiction among the courts of a Contracting State. However, where the chosen court has discretion as to whether to transfer a case, due consideration should be given to the choice of the parties”.

In the course of the panel, Rex Blackburn, Esq., practicing with Idaho Power, addressed the topic from the perspective of the states of the United States and the Uniform Law Commission. He observed that Article 5(3)b of the Convention appears as a clear indication that even the drafters of the Convention had anticipated the concern relative to the process of applicability of choice of courts agreements within the context of an internal allocation of jurisdiction in a federal system.

The whole issue rests on the dividing line between the role of state and federal governments under the United States Constitution. Even in European Union Member States with federal systems, such as Germany, the sensitivity of this issue is by no means comparable to that in the United States. The United States by virtue of the organization of its state and

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federal court systems may in fact face a unique challenge to implement treaties that address essential functions of its component states, such as the jurisdiction of state courts and their enforcement of foreign judgments.

So far, only Mexico, on November 26, 2007, has ratified the Hague Convention on Choice of Court Agreements. The European Union signed the Convention April 1, 2009, and the United States January 19, 2009; however, neither has yet ratified it. Article 31 of the Convention provides that it enter into force shortly following its second ratification. Thus, ratification by the European Union or the United States, whichever first occurs, would trigger the entry into force of this valuable instrument for use in international trade and investment.

Professor Linda Silberman, New York University School of Law, and Keith Loken, US State Department, explained how the State Department and the Uniform Law Commission have engaged in extensive negotiations on a uniform state law that would implement the Convention in parallel with federal legislation.

Glenn Hendrix, Esq., Arnall Golden Gregory, LLP and a former chair of the Section of International Law, underlined the perception of the conflicting tensions in the US review process in course since January 19, 2009, turning on the interaction of topics such as the constitutional treaty-making power, states’ rights and the role of state and federal law and courts, in implementing the United States’ treaty obligations.

Professor Silberman identified an apparently inevitable consequence, should the current contrasting positions on federal and state rights and roles in the United States not be definitively resolved. Namely, the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards, and related US legislation, would continue as the only viable alternative to parties contracting across borders, who, predictably, would avoid any attempt to elect choice of court agreements, until such time as the United States would ratify the Hague Convention, having resolved its internal federalism issues in ways consistent with the spirit and goals of the Hague Convention.

Year of the Snake: China’s New Copyright & Patent Reforms

Review by Marie Tedesco Scott

At the 2013 spring meeting in Washington, D.C., the Section of International Law offered an excellent panel, Year of the Snake: China’s New Copyright & Patent Reforms, presenting information on China’s recent patent and copyright law reforms. The panel is a pioneering program collaboration between ABA Sections and liaisons, lead by Program Chairs Alexandra Darraby (Art Law Firm, Los Angeles, CA) and Fred Koening (Volpe & Koenig, Philadelphia, PA), liaisons to the Intellectual Property Section (IPLS) and International Section (SIL), respectively. Last year, in another collaboration between SIL and IPLS, Alexandra Darraby, co-chaired the ABA Joint Task Force, along with IPL co-chair Mary Rassenberger, to lead the official ABA response to the Chinese Copyright Law Revisions, filed with The National Copyright Administration of the People’s Republic of China (NCAC).

The presenters were each particularly knowledgeable, addressing current issues that affect interests of multinational corporations involved in business transactions with China as well as interests of individual collectors. The speakers included Jennie Ness, United States Patent and Trademark Office, Fred Koening, Volpe & Koenig, Philadelphia, PA; Steven Tepp, Director International, US Chamber of Commerce, Washington, DC; and Meph Jia Gui, Global Law Office. With China as the United States’ second largest partner in trade, the development of commercial relationships as well as the preservation and enforcement of intellectual property rights are pertinent. Some of the highlights from the exceptional panel are detailed herein.
The panelists explained that China is currently working on the fourth amendment to the patent laws. In advancement of this effort, the State Intellectual Property Office (SIPO) of the People’s Republic of China, communicates regularly with the United States Patent and Trademark Office (USPTO), accepting comments and suggestions for the amendments. This collaboration is part of an ongoing effort to strengthen China’s patent enforcement system, develop provisions that allow for investigation of patent infringement, and allow for compensation in the form of damages or fines upon finding of infringement.

As David Kappos, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office from 2009 to 2013, wrote in a September 2012 letter to Mr. Tian Lipu, Commissioner for SIPO, the USPTO understands that China’s patent law reforms are part of a comprehensive effort to “develop an innovative economy as articulated in the 15-year Medium and Long Term Innovation Strategy, the National Intellectual Property (IP) Strategy, the National Patent Development Strategy 2011-2020, and other related policies.” SIPO, as the world’s largest patent office, is an essential component of that innovative economic reform. The office received more than 1.6 million patent applications in 2011. There is debate about how indicative this number is of innovation, with a correlation conditioned on the number of those applications that the office reviews substantively. Nevertheless, the number indicates the need for precise and timely patent law reforms, as evidenced by four rounds of amendments to the patent laws.

The panelists further explained specifics about the patent law reforms. For example, Article 16 of the Chinese Patent Law currently provides that an entity granted a patent right must award compensation to an individual employee responsible for the service invention-creation in the form of (1) a reward connected to the grant of a patent and (2) a remuneration, based on the economic exploitation of the patented invention-creation. Employers can establish their own internal policies, although there are limits and minimums to the amounts. Rule 77 provides for minimum reward amounts; about $480.00 USD for a utility patent and $160.00 for design and utility model patents. Similarly, Rule 78 provides minimum remuneration amounts; about 2% of profits from an invention or utility model patents, 0.2% of profits from design patents, or a lump sum regarding these percentages and 10% of licensing revenue. Under the proposed amendments, these amounts would change. Rule 77 would instead award 200% of the monthly average wage of the employer’s employees for invention of new varieties of plants, and the monthly average wages of the employer’s employees for all other intellectual property rights once granted to an employer. Likewise, Rule 78 would change and would award 5% of profits for patents on new plant varieties, and 3% of profits for other intellectual property. There are also two alternatives suggested to Rule 78. One is that Rule 78 would provide 0.5% of revenue for patents for new plant varieties and 0.3% of revenue for other intellectual property rights. Another is that the rule would provide a reasonable multiple of the personal salary of the inventor or a lump sum.

This excellent panel showcased notions about protecting intellectual property rights for United States government interactions with China, United States corporate transactions with China, and Americans seeking to protect their intellectual property interests in China.
Several Committees of the International Section, including the Asia Pacific Committee, collaborated to present this very timely and informative program. The organizers and speakers were as below:

Program Chair - Mohammad Ali Syed, Syed Law Firm, PLLC, Nashville, TN;
Moderator - Brenda A. Jacobs, Sidley Austin LLP, Washington, DC;
Program Chair/Speaker - Eric Rose, Herzfeld & Rubin PC, New York, NY;
Speakers - Dr. Andrew Salai Ngun Cung Lian, Myanmar Development Resource Institute;
Daniel Noonan, Sciaroni & Associates - Phnom Penh, Cambodia;

Major political and economic changes are occurring in Southeast Asia, which is fast becoming an investment hotspot, thus, making it a current hot area, as economists and investors alike are pointing to this market with equal enthusiasm. Competition for deals and funding, however, is increasing and investors can no longer rely on general market growth trends to make their investments successful. The audience was very fortunate to have live interaction with the high profile speakers, some of whom had travelled especially for this program from Myanmar and Cambodia.

The discussion focused on the legislative and practice changes, sanctions which limit the freedom to invest, local labor, environmental, energy, corruption, and fundraising concerns, and how these can be overcome; operational strategies and value creation; the legal frameworks and the key role of the state in incentivizing investment. Among the highlights were investment options available to both large companies and SME’s in Myanmar and Cambodia, as well as opportunities for investors beyond any specific country throughout the ASEAN countries.

The speaker from Cambodia, Daniel Noonan, Head of Banking & Finance Practice Group at Sciaroni & Associates in Phnom Penh, has been advising investors in SE Asia for the past 6 years on foreign direct investments, mergers and acquisitions and commercial regulatory matters. Prior to joining his firm, he advised investors entering Laos as an associate with DFDL Mekong and in Vietnam as an associate with Baker & McKenzie. Daniel studied law in Chicago at The John Marshall Law School and in Tokyo at Temple University.

Mr. Noonan, pointed out that the Kingdom of Cambodia is a developing country re-integrating into the world economy and has achieved sustained annual economic growth for more than a decade. His powerpoint presentation on Doing Business in Cambodia covered many areas relevant to U.S. and European businesses entering and operating in that country.

He stated that investment laws have been established that permit wholly-foreign owned entities to engage in nearly all business sectors and services (with some minor exceptions). Being one of the most open and liberalized foreign investment regimes in Asia, Cambodia has chosen a development path that differentiates it from its more developed neighbors. Although there are challenges with respect to corruption and rule of law, these are being addressed by the current government as the investment climate continues to improve.

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A highly recognized speaker from Myanmar, Dr. Salai Ngun Cung ("Andrew") Lian travelled to DC to participate in the program. A former Chin political activist and refugee, Dr. Lian earned his B.A. in International Economics and Cultural Affairs from Valparaiso University, and his LL.M and Doctor of Juridical Science (S.J.D.) from the Indiana University Maurer School of Law. Dr. Lian has returned to Myanmar last year at the request of the Myanmar government. Through the Myanmar Peace Center, he is advising both the government and minority ethnic groups on various aspects of the legal and political changes now taking shape in that country.

Dr. Lian stressed the fundamental changes that have occurred over the past two years in Myanmar, sometimes at a breathtaking speed. For example, the government formed its first independent National Human Rights Commission and the Myanmar Peace Center, held free by-elections in 2012 in which opposition candidates won 43 of 44 contested seats, adopted new labor laws that allow labor unions and strikes, as well as a well-received foreign investment laws and new anti-bribery legislation, entered into an agreement with the International Labor Organization ("ILO") to end child-labor by 2015, ended press censorship, implemented new currency regulations, and reached peace or cease fire agreements with 10 out of 11 major minority ethnic groups still under arms. Dr. Lian acknowledged that there was still work to be done, but a sea change had occurred and the current regime was committed to progress and rule of law.

Dr. Lian stressed the fundamental changes that have occurred over the past two years in Myanmar, sometimes at a breathtaking speed. In addition to its structural economic reforms, Myanmar is engaging . . . to insure a solid financial, legal and economic basis for such investments.

Eric Rose, who heads the Myanmar office of Herzfeld & Rubin P.C., a NYC-based international law firm, made a detailed presentation of the new Myanmar Foreign Investment Law and regulations. Mr. Rose, a seasoned international corporate lawyer with extensive experience assisting U.S. and European businesses startup and operations in the region, including in Myanmar, Vietnam and Thailand, emphasized the significant opportunities available in Myanmar and, broadly in the ASEAN region. Furthermore, he highlighted major successes by foreign businesses who were among the first to invest in countries emerging from dictatorship. He stressed the vast and talented human and natural resources of Myanmar, and the priority which that country’s government is putting on seeking foreign investment. For example, Mr. Rose pointed out that, in addition to its structural economic reforms, Myanmar is engaging with the international community in order to insure a solid financial, legal and economic basis for such investments. With the help of the International Monetary Fund, the government is starting a macroeconomic stability program leading to sustainable and equitable growth, continued and effective reintegration into the global economy, and the gradual reduction of poverty. The country’s parliament has just adopted the accession to the 1958 New York Arbitration Convention, and further steps are being taken to insure equitable investment policies, such as the adoption of minimum wage legislation.

The final panelist was Heather Rogers, who is with the US State Dept. Burma Desk. For more on the U.S. government’s policy in Myanmar, see the recent remarks of Assistant Secretary of State, Jose Fernandez, which can be found at http://www.state.gov/e/eb/rls/rm/2013/206027.

The panel addressed the importance of finding good local partners and the vast resources available, such as the American Bar Association Asia Pacific Committee and other Chambers of Commerce groups, as well as the resources provided by the U.S. Department of State in the region.
Supreme Court Reception
Review by Nathan Rice

On Thursday, April 25, 2013 the ABA Section of International Law and US Supreme Court Justice Anton Scalia hosted a special reception at the United States Supreme Court Building. The reception took place in the Court’s main hall, just steps from the courtroom. In addition to comments from Justice Scalia and the presentation of the Rona R. Mears writing competition winners, the reception offered attendees the unique opportunity to socialize with their peers from around the world. The event was a highlight of the Spring Meeting.

The United States Supreme Court Building is an ornate palace of justice that celebrates the Court’s rich heritage and holds a special place in American history. While the building’s marble columns allude to the Court’s past, the building is relatively modern with construction finalized in 1935. The space created the perfect atmosphere for legal professionals to socialize, network, and converse, all while admiring their surroundings.

Justice Scalia gave brief remarks about the history of the building and a summary of his time with the highest court in the land. Scalia, arguably one of the more controversial justices in Supreme Court history, was surprisingly candid and even answered a few attendee questions following his speech. His replies were humorous in nature and disarmed the crowd. For example, when asked about how he felt the first time he sat on the Supreme Court bench, Justice Scalia replied, “everybody has got to be somewhere.” Additionally, Justice Scalia jokingly relayed to the attendees that there was a basketball court located directly above the courtroom. He stated that this was “the highest court in the land.” For someone who bears such weighty responsibilities, Justice Scalia proved to be quite charming and friendly.

This event offered attendees a unique opportunity to see the United States Supreme Court in a less formal setting. For those who plan on attending a future Washington meeting, this event would be a must-attend.
At the ABA Section of International Law spring meeting in Washington DC, I attended a very interesting panel discussion: it was all about the completely different meanings of being a notary in a common-law jurisdiction and one in a civil-law jurisdiction.

The panel consisted of a Mexican, Italian and French lawyer, a German civil-law notary, and US lawyer; in that order being: Juan Francisco Torres-Landa, Francesca Giannoni-Crystal, Stéphane de Navacelle, Hans-Michael Giessen and Patrick Del Duca.

In the US one takes a short, perhaps one-day, course and becomes a notary public. A notary in the US is typically not allowed to give legal advice. Instead, a notary in the US mainly identifies, administers oaths, takes affidavits and declarations from witnesses and submits certified copies! US notaries public do not certify the contents of the document.

In a federal country, such as the US or German, the definition of the notarial role can differ, because of the differences among state laws about notaries!

In civil-law jurisdictions all is completely different:

In Germany a civil-law notary is a neutral professional, a lawyer of private civil law grounding, who drafts, takes and records legal instruments for parties, provides legal advise, and adds value to real estate and corporate transactions. According to Giessen: “The notary is a neutral expert, everybody trusts the notary; the notary has a status close to that of God.” Wow, now we are talking.

Public notaries in France are also highly trained as lawyers, with the status of public officials appointed by the state. They are legal advisers for individuals and companies, preparing contracts and agreements in sales, asset management and real estate. In France, parties to a transaction may each involve their own notaries, rather than rely on the neutrality of one notary.

In Italy civil law notaries have a degree in law; they play an official role in Italian private law. Nice to know is that an attorney as part of periodic bar membership renewal must declare that he is not a notary, as an attorney cannot be a notary. In Italy notaries act as neutral parties, impartially; they do not act on behalf of one of the parties who sign a contract, no matter who pays the notary. And, they intervene in many transactions, especially in real estate and corporate matters. They have an important role. As a result there is always a lot of interaction between the lawyers and the notary.

Mexico is also a civil law jurisdiction, meaning that the notary has full legal training. In Mexico form is substance. There are a lot of formalities, which in the end brings legal certainty. The notary in Mexico plays a significant role, including in real estate and corporate law. They prepare and investigate the title transfer for real estate which they document in a Public Instrument evidencing the seller’s ownership.

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How does a civil law notary treat a document from another country? A civil law notary treats a document from a common law country differently than that from a civil law country. They will ask for a third party opinion by a lawyer, because that will be much better than that from a notary public! This is all because of the different role the civil law notary has, being one of giving legal advice, investigate the contents of an agreement or instrument, before signing such document. For example for transfer of real estate and mortgages, the civil law notary in Germany explains the content transfer deed and the mortgage, discusses warranties and payment terms and does title search to existing mortgages. In the US this is clearly a task of a title insurance company and not the notary public! The civil law jurisdictions have, partly because of their different role of civil law notaries, a lesser propensity to undertake civil litigation; also because the civil law notary brings trust and legal certainty.

Conclusion: What’s in a name? Unlike notaries public in the US, civil-law notaries are highly trained, licensed practitioners, providing a full range of regulated legal service. Public notaries and civil law notaries: no, it is not the same!

Periodic Calls. We plan to hold periodic calls with all current and future members that feature updates on current developments, such as new laws, regulations and public policies affecting the Italian legal system and on-going and completed deals. This forum also allows for the conduct of Chapter business.

Web Page. The Chapter is considering whether to activate its web page so that each member can subscribe to the chapter listserv, gain access to programs, meetings and events, and receive updates about the chapter’s activities.

Programs for Seasonal Meetings. The Chapter is considering to propose programs for the next Seasonal Meetings. The proposed programs will include panel discussions regarding key issues and initiatives in the Italian legal system. Panelists will include legal practitioners with significant experience, as well as in-house counsel.

Social Activities at Seasonal Meetings. The Chapter will hold social activities at the Seasonal Meetings.

Committee Leaders. We would like to express our appreciation for the contribution to the Chapter’s work by the Europe Committee’s and the Section’s leaders and members. In particular, we appreciate the work carried out so far by our initial steering group members Patrick Del Duca, Francesca Giannoni-Crystal and Giuseppe Rosa.

If you have questions or would like to discuss any aspect of the Chapter, please contact the Co-Chairs, Domenico Colella and Mattia Colonnelli. We look forward to working with you in the development, growth and further good efforts of the Chapter.
The time has come to participate in THE INTERNATIONAL LAWYER’s Year-in-Review (YIR) 2013, for publication in spring 2014. THE INTERNATIONAL LAWYER is the quarterly law journal of the ABA’s Section of International Law. The Section of International Law publishes the YIR based on submissions from all of the Section’s committees.

The Editing Committee has tentatively developed an approach to the 2013 YIR to focus the content on general topics of EU Law. We invite all previous authors and current committee members to contribute a submission regarding legal developments in their area of expertise, with the following outline as a guide:

2013 Year In Review: General Topics

1. European Union law

The Europe Committee invites volunteer authors to focus on the following general topics, updates to EU law in these areas, and how the law is or is not reflected at national levels.

The subject matter for contributions to the Corporate section may include perspectives of national law developments in both EU and EEA member states. Authors may consider the recently released European “Action Plan” as a source on which to write. The “Action Plan” includes legislative and non-legislative initiatives and is available: at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0740:EN:NOT

The YIR committee invites authors to explore these topics, or propose similar ones:

1) Enhancing corporate transparency
2) Encouraging long-term shareholder engagement
3) Improving cross-border corporate operations
4) Codifying company law directives

B. Financial Developments

Another section of the YIR may focus on financial law developments and regulatory updates. The new EU Financial Regulation took effect January 1, 2013 and is intended to provide clearer rules and procedures for EU businesses, NGOs, researchers, students, etc. The new Rules of Application replace the Implementing Rules and are considered essential to the implementation of the Financial Rule. Updates and information regarding the European Financial Regulation and the Rules of Application are available: at http://ec.europa.eu/budget/news/article_en.cfm?id=201301101607

The YIR committee invites authors to explore these topics, or propose similar ones:

1) If changes to budgetary and spending rules in Financial Regulations are necessary
2) Caps on bankers’ bonuses
3) The proposed simplification of procedures in the EU merger controls

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2. European Court of Human Rights (ECHR)

The ECHR, based in Strasbourg, and deciding cases from the 47 member states of the Council of Europe, has already issued approximately 350 judgments this year, on its way to an expected 1600 judgments.

The Europe committee invites volunteer authors to focus on key decisions that the court has issued, national perspectives on decisions, developments concerning the organization of the court, and national perceptions of the court. The Court’s 2013 judgments are available on its website: http://www.echr.coe.int/ECHR/EN/Header/Case-Law/Decisions+and+judgments/Lists+of+judgments/

A few cases that have been in the press and have significant implications for Europe committee members and their practices are listed below, and the YIR committee invites authors to explore these topics, or propose similar ones:

1) Italy condemned for prison overcrowding
2) Sweden’s shutdown of a file sharing service upheld (The Pirate Bay)
3) Court allows UK worker to wear cross on the job
4) Court strikes down an Austrian restriction on gay parent adoption
5) Court strikes down French law on insulting the President (Sarkozy)
6) Current controversy over whether the UK might withdraw from the jurisdiction of the Court

Background sources on recent ECHR decisions:


- Please note:

  1. Submissions should be 700 words or fewer, including footnotes. Submissions may be edited in compliance with YIR guidelines. Longer submissions will be accepted, in addition to the 700 word submission, and will be compiled and placed on our committee homepage. These submissions should be no more than 1,500 words, including footnotes.

2. Submissions must be drafted in law review format.

If you are interested in a topic but are unsure about submitting on your own, please let us know. We may be able to pair you with other members interested in the same topic.

If you are interested in submitting, please contact Marie Tedesco Scott by June 17, 2013.

- Please include a brief description of the topic you intend to cover.

- Please reply directly to Marie Tedesco Scott at MScott35@slu.edu and Bryan Yasinsac at bay03@my.fsu.edu

Final submissions will be due August 27, 2013.

**Current controversy over whether the UK might withdraw from the jurisdiction of the Court**

**EUROPE UPDATE**

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The Europe Committee continuously seeks qualified professionals prepared to contribute their time and talents to continue developing a more active Committee. This is a prime opportunity to become involved with a community of lawyers that share an interest in Europe and European law, who are fellow American Bar Association members. The Europe Committee welcomes any suggestions, ideas or contributions to enhance this occasional publication. If you are interested in participating actively with the Committee, please contact any member of the Committee Leadership.

Europe Committee Hot Topics Newsletter Editorial Board:

Guest Editor, Europe Update Current Issue:
Europe Committee Reports —
Washington DC 2013 Section of International Law Meeting
Nathan Rice

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Guest Editor: Georgi Gouginski

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