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International Law Section News and Calendar of Upcoming Events.....

- Past Chair Lecture Series: Former Chair Jeffery J. Daar Speaks About Attorney-Client Privilege in Cross-Border Matters, October 8, 2014 at 6pm at the LACBA Offices.
- Conference on International Wine Law, November 20, 2014, from 5-8pm at the LACBA Offices. The chair of this event is the ILS Program Committee Chair, Professor Myanna Dellinger.
- Consul General Luncheon, Sponsored by the Los Angeles Economic Development Corporation and LACBA, will take place on January 26, 2015. Specific time and location to be determined.
- All-Day Event with the Port of Los Angeles, LACBA, and Japanese and Philippines Bar Associations. The event will take place at the LA Law Library, on January 23, 2015. Further details are forthcoming.
- Third Bi-Annual Legal Ports Conference, March 19, 2015 – 8am-6pm at Cal State University (details forthcoming). Chairing this event is the ILS Chair, David Griffith.
- Executive committee monthly meetings take place the second Wednesday of every month. The next scheduled Executive Committee meeting will take place at 6pm on Wednesday, November 12th, at the LACBA Offices, 1055 W. 7th Street, Suite 2700, Los Angeles, CA 90017 commencing with a Past Chair Lecture by Constance Kim on international arbitration issues.

Past Events.....

- On August 13, 2014, former ILS Chair Malcolm McNeil, who is currently an International Law Partner at Arent Fox LLP, delivered an informative lecture to LACBA ILS about strategies for becoming a successful international lawyer.
- On October 15, 2015, in Qingdao, China our ILS Chair, David M. Griffith, gave a presentation on “Special Economic Zones and Free Trade Zones in China and the Maritime Silk Road”, at the 2014 International Ocean Summit Forum.

International Legal Updates.....

- **Cyprus v. Turkey (just satisfaction), Eur. Ct. of H.R. 20 (2014):**

The European Court of Human Rights awarded just satisfaction under Article 41 for the first time. Just satisfaction allows for the recovery of pecuniary damages, non-pecuniary damages and costs and expenses.

Turkey was ordered to pay Cyprus 30,000,000 Euros in non-pecuniary damages suffered by relatives of 1,456 Greek-Cypriot missing persons as well as 60,000,000 Euros for non-pecuniary damages suffered by enclaved Greek-Cypriots in the Karpas peninsula in Turkish-occupied Cyprus. The court decided in favor of Cyprus in 2001 but did not rule on the issue of just satisfaction until this decision.

The most recent decision is important for two reasons. First, no time limits have been established for parties to submit just satisfaction claims. The court found that a 9 year delay in

requesting just satisfaction did not preclude Cyprus' claim. Second, just satisfaction is appropriate in inter-state conflicts. The award was not for Cypriot state claims but for the claims of individual victims. The 90,000,000 Euro award will be given to Cyprus for distribution to the victims.

- **Murphy v. Sloan, Ninth Circuit Court of Appeals, filed August 25, 2014:**

In a child custody dispute, the court was asked to reevaluate the Ninth Circuit's test for a child's "habitual residence" under the Hague Convention on the Civil Aspects of International Child Abduction. Child was born and lived in United States until parent's separation. Under the Convention, a child should be ordered back to the country of habitual residence if wrongfully removed or retained in another signatory state.

The Ninth Circuit refused to adopt a standard to determine habitual residence that takes into account the subjective experience of the child, as requested by the mother. Instead, the court will continue to use the standard set out in *Mozes*, and will continue to look for the "last shared, settled intent of the parents" and whether a child's attachments to a country have changed.

Here, the mother brought the child to Ireland on what the parents agreed would be a trial period while mother attended school. The child attended school in Ireland but still returned to the United States at least four times a year to visit her father and his family. Child's regular dentist and doctor were also in the United States. In addition, much of child's possessions remained stateside and mother intended further her education in the United States, England or Ireland in the near future. The court affirmed that child's habitual country of residence was still the United States. *Full text:* <http://www.metnews.com/sos.cgi?0814//1317399>

- **Doe v. Nestle USA, Inc. – Ninth Circuit Court of Appeals, filed Sept. 4, 2014:**

The Ninth Circuit Court of Appeals vacated a district court's dismissal of an action under the Alien Tort Statute. The action was brought by former child slaves who were forced to work coca farms in the Ivory Coast. Plaintiffs alleged that defendant corporations had aided and abetted in the slavery.

The Alien Tort Statute (ATS) gives any district court jurisdiction over torts committed in violation of International or US Law, no matter where the tort occurred. The first issue a court must decide in an ATS claim is whether the plaintiff has a cause of action under International Law. Here, the court found that nothing prevents a corporation from being immune from liability under the ATS. And that a corporation can be guilty of aiding and abetting slavery under International Law. The court left the issue of domestic law to the district court and will be decided as a first instance. Domestic law will decide the issues such as damages, causation, and joint and several liability.

Articles.....

International Legal Justifications for an Attack on ISIS

By: Stephanie Macuiba

On the eve of the 13th anniversary of 9/11, President Obama gave a televised speech announcing the United States' commitment to defeating the Islamic State of Iraq and Syria (ISIS) (also referred to as Islamic State of Iraq and the Levant or simply the Islamic State). This announcement came after ISIS released footage of two gruesome executions of US journalists. The President's plan includes air strikes in Iraq and Syria, arming and training modest Syrian Rebels, Sending troops to Iraq, not as boots on the ground, but to help Kurdish and Iraqi forces, and working with regional leaders to form a coalition.



Image courtesy of Reuters.

Legal justifications for an attack on ISIS must pass a two part test, justification under US Law and justification under International Law.

The Administration argues that it has domestic authority under the 2001 Authorization of the Use of Military Force (AUMF). But the Administration has not identified its justification under International Law.

The United Nations Charter Article 2(4) prohibits the use of force unless approved by the United Nations Security Council or as an act of self-defense.

There has not yet been any mention of appealing to the Security Council. So if any action is justified it must meet the requirements for self-defense.

Self-defense can only be used if there has been an armed attack or imminent threat of an armed attack. With this in mind, there are three possible arguments the Administration may make: (1) collective self-defense, (2) individual self-defense, or (3) anticipatory self-defense.

The fact that ISIS is a non-state actor (NSA) adds an additional complication for any US actions. As a NSA, ISIS is operating in other states. For the US to intervene, the states hosting ISIS would have to be unable or unwilling to suppress ISIS. It is generally accepted that Iraq is unable to suppress ISIS. But Assad in Syria appears to at least be willing to suppress ISIS.

- Collective Self-Defense

For collective self-defense, the state subjected to armed attack must invite the help of another state. Iraq is no doubt under armed attack as ISIS has violently overtaken a sizable portion of Iraq. At Iraq's request, the United States could assist in eradicating ISIS from Iraq.

But ISIS is also present in Syria which presents a more complicated scenario. The country is currently involved in a multifaceted civil war which involves ISIS. The US does not support the government but instead supports the "modest" rebels. It is highly unlikely that President Assad will invite the US to act on its behalf. The best argument for intervention in Syria would be collective self-defense of Iraq. But this also means the US would have to argue that Syria is unable or unwilling to suppress ISIS.

- Individual Self-Defense

Individual self-defense is justified after a state suffers an armed attack. The Administration has two arguments here. First, the beheadings of two US citizen journalists constitute an armed attack. A similar argument was made when Libyan forces bombed a disco in Berlin that was a known hangout of US service members, killing one and injuring 68. The US was justified in attacking a Libyan base as self-defense. The US may have an argument but any force must be necessary and proportionate. It is doubtful that a massive air strike campaign is proportionate.

The other option is also on shaky ground. The US could argue that the attack on September 11, 2001 justified the use of force against Al-Qaeda. And the US is justified in using self-defense until Al-Qaeda no longer presents a threat. This argument is a stretch. Al-Qaeda and ISIS are no longer the same as the two have publicly split. Nonetheless, the Administration appears to be using this same line of logic in its domestic justification under the AUMF.

- Anticipatory Self-Defense

A State is not obligated to wait for an attack to be justified in a use of force. The use of anticipatory self-defense pre-dates the United Nations Charter. In 1837, the British destroyed a US steamship named the *Caroline* because of its anticipated use of assisting Canada in a rebellion against the British.

To be justified, an armed attack must be imminent. Immanency is determined after considering various factors such as probability of attack, nature of attack, scale of attack, and whether self-defense would amount to a lesser amount of damage than the imminent attack. It must be nearly certain that an armed attack will occur.

The Administration has not released specifics regarding threats against the United States. However, in July Secretary of Defense Chuck Hagel announced that ISIS poses an imminent threat to the United States. It is doubtful that the Administration will disclose any specific facts that would allow for an in depth analysis of anticipatory self-defense. Any analysis by civilians will take place after the fact.

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